Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

FIDELITY AND CASUALTY COMPANY OF NEW YORK, THE HANOVER INSURANCE COMPANY, and THE TRAVELERS INSURANCE COMPANY,

Petitioners,

versus

SIDNEY N. AHYSEN, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does section 33(i) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 933(i), which prohibits suits by covered workers against "persons in the same employ," preempt Louisiana tort theories allowing suits against executive officers of a maritime employer?

2. May a worker covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, choose a state tort remedy against coemployees in lieu of federal or state workers' compensation benefits?

LIST OF PARTIES AND RULE 29.1 LIST

The proceedings below involve the consolidated actions of the following Plaintiffs:

Ahysen, Sidney N.;
Aikman, James A., Sr.;
Albert, Felix R.;
Alexander, Frank, Jr.;
Ancar, Lloyd, Sr.;
Anderson, Moses;
Augustus, Ernest James;
Barnes, Jerry W., Sr.;
Barrow, Joseph P.;
Belton, L. S.;
Bibbens, Albert S.;
Billy, James, Jr. (Deceased);
Billy, Gladys Marie;
Billy, Christopher James;
Billy, Cinnamon Kristen;
Boudoin, Joseph L.;
Boudreaux, Melvin T.;
Boudreaux, Alcide, Jr.;
Bourgeois, Norman;
Breaux, John J.;
Broglin, Flemings, E.;
Brooks, Almiro, A.;
Brown, Joe S. (Deceased);
Brown, Willie, Jr.;
Brown, William;
Camese, August;
Camus, Albert L.;
Camus, Anthony;
Carter, David;
Carter, Ralph D., Jr.;

LIST OF PARTIES
AND RULE 29.1 LIST – Continued

Carter, Louis L.;
Casimier, Joseph E.;
Centineo, Joseph John;
Charles, Calvin, Jr.;
Charles, Delando;
Charles, Lloyd;
Chatman, Clifton C., Jr.;
Cheatham, David;
Clark, Morris J.;
Coglaiti, Charles (Deceased);
Coleman, Robert E.;
Coleman, Bernard W., Sr.;
Cosse, Willie E.;
Curtis, Will;
Daigle, Robert J.;
Davis, Edward Henry;
Davis, Kenny;
Declouet, Edward, Jr.;
Derocha, Harold L. (Deceased);
Devore, Elmore W.;
Donsereaux, Leonard Albert;
Douglas, Rufus T.;
Dufrene, Charles M.;
Duplessis, Mervin E.;
Este, Angelina S.;
Evans, Charles;
Everett, Emmett E., Sr.;
Figarola, John E.;
Flowers, Ernest E.;
Flowers, Larry C., Jr.;
Freeman, George;
Fryou, Joseph;
Fryou, Ralph M., Sr.;
Garrison, Lionel;
Gerrets, Melvin M.;

LIST OF PARTIES
AND RULE 29.1 LIST – Continued

Gonzales, Lloyd C. (Deceased);
Gonzales, Emma Arabie;
Grundmeyer, Ennis Henry;
Guidroz, Lionel J.;
Guillot, Jesse J.;
Guillot, Lloyd J., Sr.;
Hadley, Wilson;
Hammond, Robert E., Jr.;
Harris, Raymond (Deceased);
Harris, Bridget;
Hart, Cleveland James;
Head, Abbie A.;
Heard, Horace, Jr.;
Henning, Cyril A.;
Henry, Jerome;
Henry, John, Jr.;
Henry, Leo;
Hill, Elliot M.;
Hintz, William C.;
Hollingsworth, Eddie, Jr.;
Hughes, Joseph H., Jr.;
Humble, A. Andrew (Deceased);
Hunter, Joseph;
Hutzler, Charles Patrick, Sr.;
Isaac, Harold;
Jackson, Ellis, Sr.;
James, Jesse B.;
Jenkins, Frank L. (Deceased);
Jenkins, Mary Elizabeth;
Jenkins, Mary Ann Audry;
Jenkins, Brenda M. Cleland;
Johnson, Enos;
Johnson, Fred, Jr.;
Johnson, Harold;
Johnson, Junius, Jr.;

LIST OF PARTIES
AND RULE 29.1 LIST – Continued

Kass, Eldrige M.;
Kayward, Harrison, Sr.;
Kelly, Bobby J.;
Kennedy, Aubrey L.;
Kennedy, Daniel R.;
Killeen, Michael James;
King, Herbert H.;
Lafont, Clifford J.;
LaFrance, Otis A.;
Landry, Larry Luke;
Lassere, Ellis J.;
LeBlanc, Cleophas L.;
Manale, Joseph N., Sr.;
Martin, Joseph M.;
Martin, Joseph, Jr.;
Martin, Larry J. (Deceased);
Martin, Theodore;
Matthews, Lillie M.;
McCalebb, Edward, Sr.;
McCallon, Henry;
McCoy, Loraine H.;
McGee, Isaiah;
McGee, Nathaniel;
Miller, Walter;
Mitchell, Dwight J.;
Molaison, Jackson L.;
Morgan, Herbert Lee;
Mosley, Behrman (Deceased);
Mosley, Michael Octave;
Murphy, Donald H., Sr.;
Noi, Ronald;
North, Marlene Gonzales;
Nunnery, Elden J.;
Orgeron, George W.;
Parr, Henry J.;

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AND RULE 29.1 LIST – Continued

Perdue, Kenneth;
Phillips, George H.;
Pitre, Albert P.;
Pitre, Ralph J.;
Polite, Ferdinand;
Pollard, Collin C. (Deceased);
McMillan, Doris L.;
Porter, Morsie, Sr.;
Ricard, Arthur;
Richard, Andrew;
Richard, Raymond Paul, Sr.;
Richardson, Paul R.;
Riggins, Joseph, Sr.;
Ross, Clarence;
Roy, Ernest W., Sr.;
Sapia, Harry Joseph;
Scanlan, Catherine Humble;
Serpas, Leon J.;
Sheaffers, West, Jr.;
Simonson, Arthur M., Sr.;
Stenger, Clayton A.;
Sterling, Timothy;
Stewart, Lonnie B.;
Templet, Irvin P.;
Thomas, Eugene F., Sr.;
Tierney, August A.;
Tierney, Eugene J., Sr.;
Tranchina, Joseph V. (Deceased);
Tranchina, Imelda;
Tranchina, Michael;
Tranchina, Paul William;
Tranchina, Mary H. Moorey;
Tranchina, Diana Smith;
Tranchina, Joseph P.
Tranchina, James G.

LIST OF PARTIES
AND RULE 29.1 LIST – Continued

Tranchina, Karen Easter;
Treadaway, Malcolm (Deceased);
Trosclair, Angelo J., Jr.;
Tullier, John N.;
Ussin, Edward J.;
Van Hess, John W.;
Vinterella, Anthony;
Walter, Robert;
Washington, Alexander;
Washington, Jerold B.;
Watkins, Gilbert H., Jr.;
Wattigney, Milton J.;
West, Harold J.;
White, Clifford J.;
Whitten, Winston M., Sr.;
Wilkerson, Robert W.;
Williams, Lionel;
Williford, Billy R.;
Wilsey, Charles F.; and
Wilson, Gus A.

Petitioners, Defendants in the proceedings below, are Fidelity and Casualty Company of New York, whose parent corporation is Continental Insurance Corporation; The Hanover Insurance Company, whose parent corporation is Allmerica Property & Casualty Companies, Inc., and whose ultimate parent is State Mutual Life Assurance Company; and The Travelers Insurance Company, whose parent corporation is The Travelers Group Inc. None of the Petitioners have non-wholly owned subsidiaries.

Other named Defendants in the proceedings below are:

Aetna Insurance Company
A.P. Green Industries

LIST OF PARTIES
AND RULE 29.1 LIST – Continued

Armstrong World Industries, Inc.
Asbestos Claims Management Corp.
Avondale Industries, Inc.
Celotex Industries, Inc.
Combustion Engineering, Inc.
Dixie Mill Supply Co.
Eagle, Inc.
Equitable Shipyards, Inc.
Flexitallic, Inc.
Flintkote Co.
Foster Wheeler Corporation
GAF Corporation
Garlock, Inc.
General Electric Co.
Gulf Belting & Gasket Co., Inc.
Gulf Engineering Co., Inc.
Hopeman Brothers, Inc., individually and as successor to Wayne Manufacturing Co.
Kaiser Aluminum & Chemical Company
LA-MO Refractory Supply Co., Inc.
Marquette Insulations, Inc.
McCarty Inc.
Louisiana Insurance Guaranty Association (LIGA) (on behalf of executive officers of Equitable Shipyard, Amerisure Companies, Hartford Ins. Co., Argonaut Ins. Co., as Insurers of Gatke Corp.)
Owens-Corning Fiberglas, Inc.
Pittsburgh-Corning, Inc.
Reilly-Benton Company, Inc.
The Anchor Packing Co.
United States Gypsum Co.
Uniroyal, Inc.
Westinghouse Electric Corporation

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FIDELITY AND CASUALTY COMPANY OF NEW YORK, THE HANOVER INSURANCE COMPANY, and THE TRAVELERS INSURANCE COMPANY,

Petitioners,

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SIDNEY N. AHYSEN, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR WRIT OF CERTIORARI

The Petitioners, Fidelity and Casualty Company of New York, The Hanover Insurance Company, and The Travelers Insurance Company, respectfully pray that a writ of certiorari issue to review the judgment for the Supreme Court of the State of Louisiana entered in this proceeding June 23, 1995.

OPINIONS BELOW

The rulings of the Louisiana Supreme Court, the Louisiana Fifth Circuit Court of Appeal, and the

Louisiana Twenty-Fourth Judicial District Court are not reported. The decisions are reprinted in Appendix B through Appendix D, infra.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). On June 23, 1995, the Louisiana Supreme Court declined to review the decisions of the trial court and the state intermediate court of appeal, both of which allowed LHWCA-covered workers to pursue state tort remedies against their coemployees. In doing so, the Louisiana Supreme Court has denied Petitioners' immunity under section 33(i) of the Longshore and Harbor Workers' Compensation Act (the "LHWCA") and perpetuated a view it alone holds: That the LHWCA does not preempt state tort claims against coemployees. *See Poche v. Avondale Shipyards, Inc.*, 339 So. 2d 1212 (La. 1976), *appeal dismissed*, 434 U.S. 803 (1977). The ruling of the Louisiana Supreme Court has pragmatic finality even though these tort suits remain to be tried on the merits. If this Court reverses the Louisiana view, all further action against the Petitioners will be precluded by the tort immunity provisions of the LHWCA. If, however, the Petitioners prevail at trial on a nonfederal basis, the Louisiana view of LHWCA immunity will improperly place coemployees at risk and will continue to erode the federal workers' compensation bargain embodied in that statute. *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-80 (1988); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Cl. 2, United States Constitution (the "Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding"), U.S. Const. Art. VI, § 2.

Section 33(i) of the Longshore and Harbor Workers' Compensation Act, 73 Stat. 391 (codified as amended at 33 U.S.C. § 933(i)), "Right to compensation as an exclusive remedy." The entirety of this statutory provision is reprinted in Appendix "E."

STATEMENT OF THE CASE

The Plaintiffs below are former employees of Todd Shipyards, Inc., New Orleans Division ("Todd Shipyards"), a ship repair facility that operated for many years alongside the Mississippi River near New Orleans, Louisiana. In 1991 and thereafter, each worker was diagnosed with an alleged occupational disease that he attributes to asbestos exposure on ships or on the wharf at the shipyard.[1] The Plaintiffs conceded that they were ship repair workers of a covered LHWCA employer in the lower court proceedings. Ship repair workers are covered

[1] Each Plaintiff and the date of his diagnosis were identified by the Plaintiffs and adopted by the state court in the Order Setting Cases for Trial. Appendix A.

by the LHWCA. 33 U.S.C. § 902(3) (definition of "employee").

Although Todd Shipyards secured the payment of workers' compensation under both the LHWCA and Louisiana workers' compensation laws, the workers have not sought any compensation benefits, choosing instead to pursue compensatory damages under Louisiana tort theories. Their actions are now part of a consolidated tort case involving suits by hundreds of marine workers.

The Petitioners were joined to this mass asbestos litigation as the insurers of Todd Shipyard's executive officers. The Plaintiffs contend that the negligence of the executive officers caused or contributed to their asbestos exposure. Under a Louisiana procedural device known as "direct action," they seek to hold the insurers responsible for the conduct of these officers.

On February 21, 1995, the Todd insurers sought summary judgment under the immunity provisions of the LHWCA. In the motion and supporting memorandum, the insurers pointed out that "[t]he LHWCA absolutely prohibits tort claims by an employee against his employer or others employed by that employer," and that "[s]tate law is, therefore, preempted by Section 933(i) in this instance."

The trial court denied the motion (App. B), and the Todd insurers renewed the argument in the Louisiana Fifth Circuit Court of Appeal. The insurers presented two Assignments of Error raising the federal question, arguing that the trial court erred: "(2) in failing to apply the exclusivity clause of the LHWCA Section 933(i) to this action, and (3) in violating the supremacy clause of the

United States Constitution by allowing the plaintiffs to pursue tort actions against the executive officers that were preempted by the exclusivity clause of the LHWCA." When the intermediate appellate court refused to consider the questions (App. C), the Todd insurers sought review of the same issues by the Louisiana Supreme Court, presenting the identical Assignments of Error. The Louisiana Supreme Court refused to consider the matter, without offering an opinion on the issues raised. (App. D). In a previous ruling rendered on indistinguishable facts, the Louisiana Supreme Court expressly held that section 933(i) of the LHWCA does not prevent Louisiana from offering a tort remedy against the executive officers of marine employers. *Poche v. Avondale Shipyards, Inc.*, 339 So. 2d 1212 (La. 1976), *appeal dismissed*, 434 U.S. 803 (1977).

REASONS FOR GRANTING THE WRIT

For nearly twenty years, Louisiana has sponsored a tort remedy that directly conflicts with the immunity provisions of the LHWCA. The contrary holdings of two federal circuit courts of appeal and a sister state have failed to deter it from doing so here. Louisiana's refusal to yield to federal law poses a grave threat to all marine employers and coemployees, a peril that will endure for many years to come in cases involving occupational diseases. This Court should grant the writ and reestablish the federal immunity guaranteed by the LHWCA.

1. The Louisiana View Conflicts with Numerous Federal Appellate Decisions and the View of Another State.

Since 1976, the Louisiana Supreme Court has refused to enforce section 933(i), the provision of the LHWCA granting immunity to coemployees, in tort suits brought against the officers of an LHWCA employer. *Poche*, 339 So.2d at 1221. In *Poche*, the Court held that if the worker does not accept compensation payments under the LHWCA, he or she is free to pursue a tort remedy against the corporate officers of the employer. *Id.* Although the Court acknowledged that "the provisions of state and federal compensation laws with respect to third party negligence actions are different," it viewed the area as one in which "the LH[W]CA and state compensation statutes could operate concurrently, . . . " *Id.*[2]

Two federal circuits have taken the opposite view. Long before the Louisiana Supreme Court considered the issue, the Fifth Circuit had made clear the expansive effect of the LHWCA immunities:

> Sections 905(a) and 933(i) of [the LHWCA] completely obliterate[d] the rights at common, civil or maritime law against the Employer and fellow employee. Congress in its unlimited power has determined that the relationship gives rise only to compensation liabilities. The nature of the obligation is that there is no – the word is *no* – obligation.

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[2] This Court initially invited the Solicitor General to offer an opinion on the issue. 431 U.S. 903 (1977). The Court later dismissed the appeal "for lack of appellate jurisdiction." 434 U.S. 803 (1977).

Nations v. Morris, 483 F.2d 577, 587-88 (5th Cir.), *cert. denied*, 414 U.S. 1071 (1973) (emphasis in original). The Fifth Circuit has remained firm in that conviction to this day. It has repeatedly reaffirmed in practice and holding that section 933(i) preempts state tort remedies, and that the states may not offer a tort remedy to marine workers, even in the zone of concurrent jurisdiction over workers' compensation remedies. *See Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360 (5th Cir. 1995) (finding that the LHWCA preempted a worker's state law deceptive trade practices claim); *Perron v. Bell Maintenance and Fabricators, Inc.*, 970 F.2d 1409, 1413 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1264 (1993) (section 933(i) immunity bars respondeat superior liability based on the negligence of coemployee);[3] *Rosetti v. Avondale Shipyards, Inc.*, 821 F.2d 1083, 1085 (5th Cir. 1987), *cert. denied*, 484 U.S. 1008 (1988) (section 905(a) bars ship builder's state law negligence action against employer).

The Third Circuit has also rejected the Louisiana view. *Peter v. Hess Oil Virgin Islands Corp.*, 903 F.2d 935 (3d Cir. 1990), *cert. denied*, 498 U.S. 1067 (1991). After tracing the long history of concurrent state and federal jurisdiction over workers' compensation remedies for maritime employees, the *Peter* Court held that "where an employer has obtained workmen's compensation coverage for its LHWCA employee under both LHWCA and the state or

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[3] The *Nations* and *Perron* decisions enforced LHWCA immunity against state tort claims arising under the Outer Continental Shelf Lands Act, which incorporates state law that is "not inconsistent . . . with other Federal laws." 43 U.S.C. § 1333(a)(2)(A).

territorial statute, § 905(a) and the Supremacy Clause bar a state or territorial tort recovery against the employer." *Id.* at 953.

With the exception of Louisiana, the states have been equally willing to recognize the LHWCA's preemption of state tort remedies. When, for example, the Alabama Supreme Court considered whether it could allow coemployee suits by marine workers, it took the view

> that the LHWCA and the law of Alabama are in serious conflict as to the maintenance of coemployee suits, and because that is the case, we hold that federal law will preempt state law.

Fillinger v. Foster, 448 So.2d 321, 326 (Ala.), *cert. denied*, 469 U.S. 872 (1984). The *Fillinger* Court specifically rejected the Louisiana view, because "the concurrent jurisdiction for the pursuit of benefits under a state's workmen's compensation scheme does not include common-law suits for tort damages." *Id.*; *see also Peter*, 903 F.2d at 952 n.17 (recognizing that the Alabama and Louisiana Supreme Courts "have reached conflicting results" on the issue of LHWCA preemption).

Despite the contrary holdings of federal and sister-state courts, Louisiana continues to rely on the *Poche* reasoning to extend the reach of its law. In 1989, it recited the *Poche* rule with approval in extending state workers' compensation laws seaward. *Logan v. Louisiana Dock Co., Inc.*, 541 So.2d 182, 188 (La. 1989) ("In [*Poche*], we permitted third party negligence actions to proceed under Louisiana law despite the availability of a federal remedy

under the LHWCA.") (citation omitted).[4] The court has also used the *Poche* rationale to apply Louisiana workers' compensation laws to accidents occurring on the Outer Continental Shelf. *Thompson v. Teledyne Movible Offshore*, 419 So.2d 822 (La. 1982).[5] As its summary denial of review in this case demonstrates, the Louisiana Supreme Court is uninterested in changing its view. Marine coemployees will remain at risk, and Louisiana will continue to deny immunity under the LHWCA until this Court resolves the conflict through certiorari.

2. The Louisiana View is Erroneous.

Courts have long held that a state law is preempted "[w]here the state law either directly conflicts with the federal law or interferes with the regulatory program established by Congress." *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d at 363; *see also Freightliner Corp. v. Myrick*, ___ U.S. ___, 115 S.Ct. 483, 1487 (1995) (preemption occurs when it is "impossible for a private party to comply with both state and federal requirements," or when a state law " 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' " (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The

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[4] A petition for writ of certiorari to this Court was dismissed voluntarily. 492 U.S. 939 (1989).

[5] After again inviting the Solicitor General to offer the view of the United States, 460 U.S. 1035 (1983), the Court dismissed the appeal, with Justice Powell, Justice Rehnquist, and Justice O'Connor voting to set the matter for argument. 464 U.S. 802 (1983).

Louisiana view stands in direct conflict with the exclusivity clause of section 933(i) and affronts the core aim of the LHWCA – to provide limited liability to employers and coemployees in exchange for sure compensation benefits to employees.

This Court has recognized that the LHWCA incorporates a workers' compensation bargain into maritime employment relationships:

> Employers relinquished their defenses to tort actions in exchange for limited and predictable liability. Employees accept the limited recovery because they receive prompt relief without the expense, uncertainty, and delay that tort actions entail.

Morrison-Knudsen Construction Co. v. Director, Office of Workers Compensation Programs, U.S. Dep't of Labor, 461 U.S. 624, 636 (1983). In adopting the immunity provisions of section 933(i), Congress took the bargain one step further by extending it to rights among coemployees. Workers within the LHWCA surrendered the right to obtain tort damages from fellow workers, but gained immunity from suits arising from their employment-related negligence. Section 933(i) "simply means that the rights and liabilities arising within the 'employee family' will be settled within the [LHWCA]." S. Rep. No. 428, 86th Cong., 1st Sess., *reprinted in* 1959 U.S.C.C.A.N. 2134. *See also Johnson v. American Mut. Liability Ins. Co.*, 559 F.2d 382, 391-92 (5th Cir. 1977) (in exchange for its " 'sometimes awesome obligations,' " the LHWCA " 'extends to the employer and fellow employees an absolute civil immunity' ") (citations omitted).

Louisiana offers a tort remedy in direct conflict with the stated congressional aims. Members of the same "employee family" are being required to resolve their differences under Louisiana tort law, not the LHWCA. Louisiana compels coemployees and their insurers to stand before a jury, with the attendant costs of a full-blown tort trial, and to answer for compensatory damages that are inherently unpredictable. Employers are compelled by the LHWCA itself to secure the payment of benefits. *See* 33 U.S.C. § 905(a). Yet coemployees are denied their end of the bargain, and, "in the long run it is the employer who pays the fare." *Nations*, 483 F.2d at 589.

Louisiana justifies its obstruction of congressional ends as a permissible exercise of authority in an area of concurrent state and federal jurisdiction. *Poche*, 339 So.2d at 1221. It points to this Court's historical willingness to allow both state and federal compensation schemes to coexist in the borderline area sometimes known as the "twilight zone." *Id.*; *see Calbeck v. Travelers Ins. Co.*, 370 U.S. 114 (1962); *Davis v. Department of Labor and Indus.*, 317 U.S. 249 (1942). In the view of the Louisiana Supreme Court, because this Court will allow the states to provide *compensation* remedies for some marine workers, those states are perfectly free to grant *tort* remedies to those workers.

This Court has tolerated an area of concurrent jurisdiction over workers' compensation remedies – a "twilight zone" – as a practical solution to the uncertain boundary of state control over maritime matters. Yet even while recognizing a zone of dual control over compensation remedies, the Court has observed that a state may overstep its bounds if it intrudes on the LHWCA bargain.

See Sun Ship v. Pennsylvania, 447 U.S. 715, 724 n.6 (1980). If for example, state rules prevent a marine employee from recovering the full measure of LHWCA benefits – the employee's end of the LHWCA bargain – the Court has proposed an approach that would "pre-empt the state compensation exclusivity clause" denying federal benefits. *Id.*

The Louisiana view relies most heavily on this Court's decision in *Hahn v. Ross Island Sand & Gravel Co.*, 358 U.S. 272 (1959). There, the Court allowed Oregon to grant a "twilight zone" worker a damages-based penalty against an employer that failed to secure state compensation payments. *Id.* at 267. But as the Third Circuit later noted, the *Hahn* decision merely allows a state to do what the LHWCA itself does – impose a penalty for failing to secure the payment of workers' compensation; therefore the "existence and function of that liability was entirely consistent with Congress' intent to ensure a seamless intersection between state and federal compensation coverage." *Peter*, 903 F.2d at 953. Moreover, the Oregon statute at issue did not preclude immunity. So long as a marine employer secured state compensation coverage, it would obtain tort immunity under Oregon law. By contrast, as the Louisiana Supreme Court would have it, nothing the Todd Shipyards coemployees do now or could have done in the past provides immunity under the LHWCA *or* Louisiana law. Thus, the Louisiana view, which permanently deprives marine coemployees of all immunity, does far more violence to the LHWCA's scheme.

Louisiana is offering a tort remedy, not as penalty, but as a *right* to all plaintiffs notwithstanding their

employer's compliance with the LHWCA. In doing so, it allows workers to breach their congressionally mandated compact, and completely denies coemployees and employers the benefit of that bargain. Following the approach outlined in *Sun Ship*, this Court should preempt the Louisiana tort remedy.

3. The Question Presented is Important.

The Louisiana view poses a serious threat to LHWCA coemployees and insurers of the maritime industry. In this matter alone, the executive officers of Todd Shipyards are named in hundreds of claims in the 24th Judicial District Court and other Louisiana courts. Moreover, the tort law of Louisiana applied to these cases exposes the officers to many times their proportionate degree of fault in causing the injuries.[6] The officers' insurance coverage, with limits chosen decades ago, is being depleted by claims thought to be preempted at the time the policies were written. Accordingly, Louisiana's refusal to honor the congressional bargain of "predictable and limited liability" has disastrous consequences for all marine coemployees.

The problem presented by the Louisiana position may have seemed short-lived when this Court last considered the issue, because the Louisiana Legislature abolished "executive officer" tort suits a short time before the

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[6] For example, if nine officers are sued with one asbestos manufacturer, the officers must underwrite ninety percent of the damages awarded, even if they are far less culpable than the manufacturer. *See Cole v. Celotex*, 599 So.2d 1058, 1072-74 (La. 1992).

Poche decision. *Poche*, 339 So.2d at 1221 n.7; La. Rev. Stat. Ann. 23:1032. But it has been revived by the Louisiana Supreme Court in *Cole* and will persist because in long-term exposure cases, such as the asbestos suits now pending against the executive officers of Todd, Louisiana courts apply rules that have been legislatively abolished in that state long ago. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). The Louisiana view of LHWCA immunity will, therefore, affect the marine industry for many years to come.

Because marine commerce is an area of intense federal interest, this Court has traditionally kept a close eye on the LHWCA, addressing the scope and operation of the statute many times. It has not hesitated to consider even the finest points of statutory construction. *See, e.g., Metropolitan Stevedore Co. v. Rambo*, ___ U.S. ___, 115 S.Ct. 2144 (1995) (construing meaning of "change in conditions" under section 922); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469 (1992) (construing section 933(g)). It has corrected a state's erroneous view of LHWCA immunity even where the issue involved, nominally at least, only a single worker. *See Jackson v. Lykes Bros. S.S. Co.*, 386 U.S. 731, 732-33 (1967) (granting certiorari to correct erroneous state view of LHWCA immunity). As a hub of maritime commerce, Louisiana's denial of LHWCA immunity affects a substantial portion of the nation's marine employers and virtually all of their insurers. Given that the issue presented here is fundamental, and the far-reaching consequences of allowing the Louisiana view to stand, this Court should grant the writ.

CONCLUSION

For the reasons stated, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

S. GENE FENDLER
MARY S. JOHNSON
LISKOW & LEWIS
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New Orleans, Louisiana 70139
Counsel for Fidelity and Casualty Company of New York, The Hanover Insurance Company, and The Travelers Insurance Company

APPENDIX A

TWENTY-FOURTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NUMBER 424-010 DIVISION "J"

DOUGLAS R. ABADIE, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 444-648 DIVISION "J"

FELIX R. ALBERT, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 433-992 DIVISION "J"

ALFRED J. ADAMS, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 456-354 DIVISION "J"

FRANK ALEXANDER, JR., ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 460-201 DIVISION "J"

TOMMY LEE ADDISON, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 448-774 DIVISION "J"

MERVIN TAYLOR

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 426-017 DIVISION "J"

OSCAR J. CHAMPAGNE, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 457-354 DIVISION "J"

ALFRED LEE

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 470-699 DIVISION "P"

LARRY MERIDETH

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 436-503 DIVISION "J"

JERRY W. BARNES, SR., ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

FILED: _____ _____

DEPUTY CLERK

ORDER SETTING CASES FOR TRIAL

After hearing in this matter this court determines the following:

1.

Trial of eight (8) cases will be had on the 23rd day of January, 1995. These plaintiffs will be Alfred Lee, deceased, et al.; Roland Parr, deceased, et al.; Norman Martinez, deceased, et al.; Mervin Taylor, deceased, et al.; Grover Weaver, deceased, et al.; James Billy Fisher, deceased, et al.; Raymond Pettigrew, deceased, et al.; and Clarence Tisdale, deceased, et al.

2.

Trial of nineteen (19) cases will be had on the 6th day of March, 1995. These plaintiffs will be Larry Meredith a living Mesothelioma who shall be first tried; and then before a new and different jury the following cases will be tried: Dudley Blanchard Deceased; Wilburn Crayton, deceased, et al.; Emile Danos; Leroy Donseraux; Hoover P. Dugas; John Friddle; Robert M. Gates; John Jarrell; Arthur Kaiser; Partick Ledet; Nichloas Leblanc; Larry Loyd; Archie Mathews; William McClannahan; Richard R. Stanga; Eddie J. Willie; Antonio Thiel; and Isiah Wilson.

Trial of fifty-eight (58) Plaintiffs will be held on the 12th day of June, 1995. These Plaintiffs will be: Lester Adams, Salvador Barcelona, Lester E. Bardwell, Leonell "O.J." Bealer, Joseph Berkesch, Bernard C. Bidwell, Claude Brunet, John Borne, Melvin T. Boudreaux, Stratton J. Breaux, Telles Brunett, Bobbie Cadiere, Joseph E.

Casimier, Charles Chassion, deceased, Robert E. Coleman, Willie Davis, Sr., Johnny M. Donald, Welmon Coleman, William B. Foster, Walter Gisclair, Daniel D. Gordon, George Gros, Joseph D. Guthrie, Sheldon A. Guthrie, Ray R. Hano, Jerome P. Keller, sr, Andrew Lane, Ellis Lassere, Otis France, Charles Menne, Thomas Moore, James Moten, James Murphy, Donald L. Needham, John V. Oliver, Earl Parker, George Reech, Wayne Richoux, Thomas P. Rodrigue, Steve Rogers, Jr., Benoit Rome, Herb Romero, Leonard Russo, John Savoie, Sidney Stortz, Lionel Tapp, Sr., Larry J. Terrebonne, Remelton Theriot, David Trahan, Nilon E. Webb, Murphy White, Percy White, Clyde Hill, Joseph L. Oubre, Joe S. Brown, Hollis McGee, Ouria Taylor, deceased, and Gerald Clulee.

4.

The remaining Plaintiffs alleging exposure from Avondale will be tried on the 5th day of September 1995. The Plaintiffs are listed on attachment "A" and incorporated herein by reference.

5.

Additionally, all Plaintiffs represented by F. Gerald Maples, P.A., who have Todd, Equitable, and additional minimal exposures, will be tried in January, 1996. These Plaintiffs are listed on attachment "B" and incorporated herein by reference.

Entered this 20 day of December, 1994.

/s/ Jacob L. Karno
JUDGE

Monday, December 19, 1994 — SEPTEMBER 1995 PLAINTIFFS —

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
ABADIE	DOUGLAS	R		SHEET METAL MECHANIC	424-010	02-09-91	AVONDALE
ADAMS	ALFRED	J			433-992	03-07-92	AVONDALE
ADAMS	LONNIE	J	SR		444-648	10-24-92	AVONDALE
ADDISON	TOMMY	L			460-201	03-27-93	AVONDALE
ALBERT	FELIX	R		LABORER	444-648	11-21-92	AVONDALE
ANDERSON	LESLIE	D		LABORER	424-010		AVONDALE
ANDERSON	ROLAND	E		LABORER	433-992		AVONDALE
ARDOIN	DONALD	R		WELDER	424-010	02-23-91	AVONDALE
BABIN	NORMAN	J		WAREHOUSE	424-010	01-12-91	AVONDALE
BADEAUX	LESTER	C		SHIP FITTER	424-010	05-04-91	AVONDALE
BAILEY	WILLIAM	P		LABORER	456-354	06-05-93	AVONDALE
BALLARD	WAYNE	C	SR	WELDER	460-201	01-22-94	AVONDALE
BARDWELL	FESTUS	K		WELDER	424-010	05-18-91	AVONDALE
BARDWELL	LESLIE	E		WELDER	424-010	06-01-91	AVONDALE
BARNES	RONNIE	L		TACKER/BURNER	424-010	08-10-91	AVONDALE
BENNETT	CHARLES	E		WELDER/FITTER/TACKER	424-010	05-18-91	AVONDALE
BERTOT	WALTER	P		STOCK CLERK	424-010	01-12-91	AVONDALE
BILLIOT	JOSEPH	W		WELDER	424-010	05-04-91	AVONDALE
BINGHAM	PERCY		JR	WELDER	460-201	12-03-93	AVONDALE
BLOW	KENNETH	A		LABORER	424-010	06-15-91	AVONDALE
BONAMOUR	LEROY	L		OPERATOR/TACKER	424-010	04-20-91	AVONDALE
BORRAS	MELVIN	J		PAINTER	424-010	12-29-90	AVONDALE
BOUDREAUX	GILBERT	J		WAREHOUSEMAN	424-010	01-31-91	AVONDALE
BOUDREAUX	MICHAEL	A	SR	PIPEFITTER	460-201	02-23-93	AVONDALE
BOUDREAUX	WILLIAM	E		LABORER	424-010	06-29-91	AVONDALE
BOURG	PHILLIP			LABORER	424-010	06-01-91	AVONDALE
BOURGEOIS	BENJAMIN	J		WAREHOUSE MAN/WAREHOUSE SUP	424-010	01-12-91	AVONDALE
BOURGEOIS	CARL			SANDBLASTER/PAINTER/RUBBER LINER	424-010	01-12-91	AVONDALE
BOURGEOIS	LYNN	G		MECHANIC	424-010	04-06-91	AVONDALE
BRADLEY	ROY	A		LABORER	460-201	01-21-94	AVONDALE
BREAUX	EARANS	J	SR	LABORER	460-201	02-24-93	AVONDALE
BREAUX	LARRY	J		SANDBLASTER/PAINTER	424-010	01-12-91	AVONDALE
BREAUX	MARVIN	P		SHIP FITTER	424-010	05-04-91	AVONDALE
BROWN	WILLIAM			LABORER	456-354	08-07-93	AVONDALE
BROWN	WILLIAM	W	SR	LABORER	424-010	05-18-91	AVONDALE
BRUCE	NORRIS	J		SHIP FITTER/OUTFITTING FOREMAN	424-010	03-23-91	AVONDALE
BRUNET	EDWARD	P		PIPEFITTER	424-010	03-09-91	AVONDALE
BURMASTER	WAYNE	A		LABORER	456-354	01-13-93	AVONDALE
BYERS	CAREY	B		TACKER/WELDER/FITTER	424-010	06-29-91	AVONDALE
BYRD	JOHN			LABORER	433-992	02-08-92	AVONDALE
CAMARDELLE	ARCHIE			LABORER	433-992	03-07-92	AVONDALE
CAMARDELLE	WILBERT	E		SHIP FITTER	424-010	03-09-91	AVONDALE
CAMPBELL	ROBERT	W	JR	WELDER	460-201	11-04-93	AVONDALE
CANTRELL	TERRY	A		WELDER/WAREHOUSE WORKER/SHIP F	424-010	02-02-91	AVONDALE
CHADWICK	OSBURN	L		LABORER	424-010	06-15-91	AVONDALE
CHAISSON	LAWRENCE			LABORER/ELECTRICIAN	424-010	02-09-91	AVONDALE
CHAMPAGNE	OSCAR	J		LABORER	426-017	06-15-91	AVONDALE
CHAMPAGNE	RAYMOND	J		LABORER	424-010	02-09-91	AVONDALE

Number of Records : 323

"A"

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
CHAMPAGNE	WARREN	J		WAREHOUSE MAN	424-010	01-12-91	AVONDALE
CHAMPAGNE	WILTZ	J		X-RAY	424-010	02-23-91	AVONDALE
CHARLES	LLOYD			LABORER	444-648	09-19-92	AVONDALE
CHIASSON	JUNIOR	J		LABORER	444-648		AVONDALE
CLARK	ELLIOT	J		WELDER	424-010	01-26-91	AVONDALE
CLEMENT	JAMES	A		PAINT SUPERINTENDENT/FOREMAN	424-010	02-09-91	AVONDALE
CLEMENT	RICHARD	J		MAINTENANCE	424-010	04-20-91	AVONDALE
COCHRAN	JOSE	F		WAREHOUSE CLERK	424-010	01-12-91	AVONDALE
COLLIER	ROBERT	L	JR	LABORER	424-010		AVONDALE
COLOGNE	RICHARD	J	JR	LABORER	424-010	06-15-91	AVONDALE
COLOGNE	WALTER			LABORER	426-017	08-24-91	AVONDALE
COMARDELLE	HARRY	J		PIPEFITTER	424-010	01-26-91	AVONDALE
COMEAUX	HENRY	L		WELDER/SHIP FITTER	424-010	02-02-91	AVONDALE
COWART	GEORGE	W	JR	LABORER	460-201	09-21-93	AVONDALE
CUEVAS	HAYWARD			WELDER	464-064	11-13-93	AVONDALE
CUSTARD	CHARLES	P		CLEANUP DIVISION	424-010	12-15-90	AVONDALE
DANIELS	MELVIN			LABORER	456-354	06-05-93	AVONDALE
DANOS	CONNIE	J		PIPE FITTER/PIPE FITTER HELPER	424-010	02-02-91	AVONDALE
DANTIN	ARCHIE	A		MACHINIST	433-992	02-08-92	AVONDALE
DANTIN	RAYMOND	A		LABORER	424-010	02-02-91	AVONDALE
DAVIS	BOBBY		SR	CHIPPER	460-201	11-06-93	AVONDALE
DAVIS	CLEVELAND	S		LABORER	426-017	08-24-91	AVONDALE
DAVIS	GERALD	A		SHIP FITTER	424-010	04-06-91	AVONDALE
DAVIS	JAMES	O		ELECTRICIAN	424-010	04-06-91	AVONDALE
DAVIS	KENNY			WELDER	460-201	11-06-93	AVONDALE
DEAKLE	BOBBY	L		LABORER	456-354	01-08-93	AVONDALE
DECOTA	ADAM	M		SHIP FITTER	424-010	02-23-91	AVONDALE
DESHOTEL	JAMES	W		WELDER	424-010	01-26-91	AVONDALE
DILLON	DOUGLAS			WELDER	460-201	12-04-93	AVONDALE
DISHER	GEORGE	T		SPRAY PAINTER	424-010	02-02-91	AVONDALE
DOLESE	STERLING	J	SR	BURNER/TACKER	424-010	02-02-91	AVONDALE
DOMINQUE	DONALD	J		LABORER	456-354	02-23-93	AVONDALE
DORSEY	HERMAN			WELDER	460-201	12-04-93	AVONDALE
DORSEY	IKE			LABORER	456-354	05-08-93	AVONDALE
DUFREN	FREDDIE	G		RUBBER LINE DEPARTMENT	424-010	04-20-91	AVONDALE
DUFRENE	CLARENCE	J		LABORER	433-992	03-07-92	AVONDALE
DUFRENE	DONALD	A		SHIP FITTER/CARPENTER/ELECTRICIAN	424-010	01-26-91	AVONDALE
DUFRENE	RILEY	D		LABORER	424-010	07-20-91	AVONDALE
DUFRENE	TERRY	J		RIGGER	424-010	02-02-91	AVONDALE
DUFRENE	WILLIE			LABORER	436-503	07-20-91	AVONDALE
DUGAS	ALLEN	G		WELDER	424-010	03-09-91	AVONDALE
DUPREE	ROBERT	W		PROPELLER SHOP	424-010	02-02-91	AVONDALE
DYSON	CHESTER	P	JR	WELDER	460-201	12-04-93	AVONDALE
EDWARDS	EUGENE			LABORER	436-503	02-08-92	AVONDALE
EVANS	CHARLES	W	JR	PIPEFITTER HELPER	464-064	11-13-93	AVONDALE
EVANS	RAYMOND	D		PIPE WELDER	424-010	06-15-91	AVONDALE
FABRE	HAROLD	A		WELDER	424-010	09-21-91	AVONDALE
FALCON	DONALD	J		LABORER	460-201	02-21-93	AVONDALE

Number of Records : 323

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
FALGOUT	WALTER			SHIP FITTER/RIGGER	424-010	01-26-91	AVONDALE
FARVE	JESSIE	J		WELDER	424-010	01-26-91	AVONDALE
FARVE	ROBERT	P		LABORER	433-992	01-25-92	AVONDALE
FARVE	WILLIE	J	JR	WELDER	424-010	02-02-91	AVONDALE
FAULK	JOSEPH	W		LABORER	424-010	06-15-91	AVONDALE
FITZGERALD	GEORGE	C		SHIPFITTER	424-010	06-29-91	AVONDALE
FORBES	GARY	G		LABORER	424-010	12-29-90	AVONDALE
FRANCOIS	RAYMOND	J		LABORER	444-648	10-24-92	AVONDALE
FRANK	JOSEPH	V	JR	TACKER	444-648	10-24-92	AVONDALE
FREDERICK	LOUIS	J		LABORER	444-648	07-25-92	AVONDALE
GAGLIANO	FRANK	J	SR	LABORER	456-354	02-13-93	AVONDALE
GAINEY	RICHARD	D		SHIPFITTER	424-010	06-29-91	AVONDALE
GAUDET	ALLEN			WELDER	424-010	06-29-91	AVONDALE
GAUDET	RAY			SHIPFITTER	424-010	02-02-91	AVONDALE
GAUTHE	EARLVEN	P		LABORER	424-010	02-02-91	AVONDALE
GILBERT	JOHN	E		FITTER/WELDER	424-010	02-02-91	AVONDALE
GILLAM	MILTON	O		LABORER	456-354	01-16-93	AVONDALE
GIOVINGO	BENNY	J		WELDER	424-010	01-26-91	AVONDALE
GLASS	FLOYD	D		WELDER	433-992	04-11-92	AVONDALE
GLAVIANA	JUDE	A		TACKER/WELDER	424-010	02-02-91	AVONDALE
GOMEZ	STANLEY	A		PIPE FITTER/RIGGER	424-010	05-04-91	AVONDALE
GONZALES	ALVIN			LABORER	424-010	03-08-91	AVONDALE
GRAHAM	OLIVER	F		N/A	456-354	01-16-93	AVONDALE
GREEN	BERNELL	L		RIGGER	424-010	12-29-90	AVONDALE
GUIDRY	EARL	J		LABORER	424-010		AVONDALE
GUISE	LIONEL	G		BURNER/PRESS OPERATOR	424-010	02-09-91	AVONDALE
GUNDERSON	CLIFTON	O		PIPEFITTER	436-503	04-11-92	AVONDALE
GUTHRIE	ALBERT	P		WELDER	424-010	03-09-91	AVONDALE
GUTHRIE	ALVA	C		WHEEL SHOP	424-010	02-09-91	AVONDALE
GUTHRIE	RALPH	P		WHEEL MECHANIC	424-010	02-02-91	AVONDALE
GUTHRIE	RONALD	W		WHEEL SHOP	424-010	03-09-91	AVONDALE
GUTHRIE	SHELDON	A		MAINTENANCE DEPARTMENT	424-010	03-09-91	AVONDALE
HALL	JESSIE		SR	LABORER	433-992	03-07-92	AVONDALE
HANO	GILBERT	H		LABORER	433-992	01-18-92	AVONDALE
HARDY	DAVID	A		LABORER	456-354	04-16-93	AVONDALE
HARPER	MARTIN			LABORER	456-354	08-07-93	AVONDALE
HARRIS	PIER		JR	POT ROOM	460-201	12-04-93	AVONDALE
HEAD	ABBIE	A		LABORER	433-992	01-25-92	AVONDALE
HEBERT	ANTHONY			LABORER	424-010	06-01-91	AVONDALE
HEBERT	GENE			WELDER/TACKER	424-010	05-04-91	AVONDALE
HENSLEY	JOSEPH			MACHINIST	424-010	04-06-91	AVONDALE
HINRICHS	MAXWELL	J		ELECTRICIAN	424-010	03-09-91	AVONDALE
HODGES	JACOB	W		PAINTER	460-201	01-22-94	AVONDALE
HOLLAND	TRUMAN			TACKER WELDER	424-010	08-23-91	AVONDALE
HOLMES	ROBERT	A		LABORER	433-992	01-25-92	AVONDALE
HOUSTON	JAMES		JR	SANDBLASTER	424-010	01-26-91	AVONDALE
HUGHES	WAYNE	W		LABORER	424-010	01-30-91	AVONDALE
HUNTER	JOSEPH			WELDER	456-354	08-07-93	AVONDALE

Number of Records : 323

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
ISHEE	LEWIS	T		PAINT TESTER	424-010	06-01-91	AVONDALE
JACKSON	CHARLES	H		LABORER	424-010	01-12-91	AVONDALE
JENKINS	MIKE	V		WELDER	456-354	02-13-93	AVONDALE
JOHNSON	CHARLES			GRINDER	424-010	01-30-91	AVONDALE
JOHNSON	JAMES	H		FURNACE OPERATOR	460-201	12-04-93	AVONDALE
JOHNSON	JOHNNY	L			424-010	02-02-91	AVONDALE
JOHNSON	LEE	A		WELDER HELPER	460-201	11-06-93	AVONDALE
JOHNSON	LLOYD	W		TACKER	433-992	01-25-92	AVONDALE
JONES	CORNELIOUS	H	JR	WELDER	456-354	07-16-93	AVONDALE
JONES	EDWARD			GENERAL HELPER	424-010	05-04-91	AVONDALE
JONES	LLOYD	A		PAINTER/INSULATOR/RIGGER FOREMA	456-354	05-08-93	AVONDALE
KAIGLER	ROBERT		SR	WELDER	460-201	01-21-94	AVONDALE
KALK	CORNELIUS			MAINTANCE SUPERVISOR	433-992	02-08-92	AVONDALE
KELLER	LENNIS			LABORER	424-010	02-09-91	AVONDALE
KELLY	BOBBY	J		SANDBLASTER/PAINTER	444-648	07-25-92	AVONDALE
KERNER	CHARLES	T		PIPEFITTER SUPERVISOR	433-992	01-25-92	AVONDALE
KOGER	SAMUEL	S		ELECTRICIAN	424-010	02-02-91	AVONDALE
KRAEMER	KERMIT	J	JR	LABORER	424-010	06-15-91	AVONDALE
KRAFT	RAY	M		WELDER	444-648	09-19-92	AVONDALE
KRAFT	RAYMOND	A		INSPECTOR	444-648	09-19-92	AVONDALE
KUHN	EARL	R		WELDER	426-017	09-07-91	AVONDALE
LABAUVE	DONALD	F		LABORER	424-010	01-26-91	AVONDALE
LABELLA	SALVADOR		JR	ELECTRICIAN/ELECTRICIAN HELPER	424-010	05-04-91	AVONDALE
LABORDE	GORDON	G		ELECTRICIAN	424-010	03-22-91	AVONDALE
LAFONT	CLIFFORD	J		TOOL CLERK	436-503	04-11-92	AVONDALE
LAFRANCE	OTIS	A		LABORER/PAINTER/SANDBLASTER	444-648	07-25-92	AVONDALE
LAIRD	WOODWARD	V		WELDER	464-064	10-21-93	AVONDALE
LAMBERT	JAMES	D		PIPEFITTER/WELDER	456-354	07-10-93	AVONDALE
LANDRY	ALBERT			WELDER	424-010	05-04-91	AVONDALE
LANDRY	EMILE	J		SHIPFITTER/PAINT CHIPPER	424-010	12-29-90	AVONDALE
LANDRY	JOHN	U		WELDER	444-648	11-21-92	AVONDALE
LANDRY	LARRY	L	SR	INSULATOR	424-010	04-06-91	AVONDALE
LANDRY	WAYNE	J		MATERIAL MANAGER	424-010	12-29-90	AVONDALE
LARPENTER	EMERY			FOREMAN	424-010		AVONDALE
LARPENTER	JAMES	N		TACK FITTER BURNER/SHIPFITTER	424-010	06-15-91	AVONDALE
LASSERE	ROLAND	J	SR	BOILER MAKER	444-648	10-24-92	AVONDALE
LEBLANC	ERIC	P		SHEET METAL/MECHANIC	424-010	02-02-91	AVONDALE
LEBLANC	HYSON	M		SHIPFITTER/WELDER/SHEETMETAL WO	424-010	08-10-91	AVONDALE
LEE	ALFRED	V		WELDER	457-354	11-06-93	AVONDALE
LEE	CYRIL	C		WELDER	464-064	11-19-93	AVONDALE
LEE	NORMAN	E		SHIPFITTER	444-648	11-21-92	AVONDALE
LEE	RAYMOND	F		WELDER	436-503	10-05-91	AVONDALE
LEGENDRE	O.J.		JR	WORKED WITH X-RAY MATERIALS	424-010	01-26-91	AVONDALE
LEVRON	RONALD	J		N/A	433-992		AVONDALE
LOGAN	ROY	L		PIPEFITTER	444-648	10-24-92	AVONDALE
LOMBAS	WILLIAM		JR	PIPEFITTER	424-010	05-04-91	AVONDALE
LOUP	GARY	J	SR	WELDER	436-503	02-08-92	AVONDALE
MAGEE	JAMES	H		WELDER	460-201	11-06-93	AVONDALE

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
MANCUSO	FRANK	R		INSPECTOR	424-010	02-23-91	AVONDALE
MANNING	MELVIN	C		PIPEFITTER	424-010	06-01-91	AVONDALE
MARIANI	ALVIN	M		PIPEFITTER	424-010	02-02-91	AVONDALE
MARKS	JOHN	E		WELDER/DESIGNER	424-010	02-23-91	AVONDALE
MARTINEZ	FEDERICO	P	SR	PIPEFITTER	444-648	04-11-92	AVONDALE
MARTINEZ	RANDY	E		TANK TESTER/WELDER	433-992	02-08-92	AVONDALE
MASCAIR	DAVID	E		WELDER/PIPEFITTER/BURNER/PAINTER	424-010	06-15-91	AVONDALE
MATHERNE	ARMOND	A		SEVERAL CAPACITIES	456-354	08-07-93	AVONDALE
MATHERNE	CLYDE	S		LABORER	424-010	04-20-91	AVONDALE
MATHERNE	ELTON	J		SPRAY PAINTER	424-010	02-09-91	AVONDALE
MATHERNE	GILBERT	J		TACKER/WELDER	436-503	02-08-92	AVONDALE
MATRANA	NICHOLAS			WELDER	424-010	01-30-91	AVONDALE
MATTHEWS	RANDY	L		FITTER/WELDER	444-648	07-25-92	AVONDALE
MAZARAC	LINDSEY	J	SR	SANDBLASTER/PAINTER	424-010	01-12-91	AVONDALE
MCCARRY	FRANCES	R		OUT FITTER	424-010	02-09-91	AVONDALE
MCMORRIS	JERRY	L		WELDER/FITTER/TACKER	456-354	02-13-93	AVONDALE
MCSWAIN	BILLY			WELDER	433-992	02-22-92	AVONDALE
MEACHAM	DONALD	P		SHIPFITTER	424-010	02-02-91	AVONDALE
MIANO	JOSEPH	C		SHEET METAL MECHANIC	424-010	02-23-91	AVONDALE
MIANO	WILLIAM		JR	SHEET METAL MECHANIC	424-010	02-23-91	AVONDALE
MILLER	JOHN	J		GRINDER/LABORER/SCAFFOLD BUILDE	456-354	08-07-93	AVONDALE
MISTRETTA	STEVE			IRONWORKER	460-201	06-05-93	AVONDALE
MITCHELL	WALTER	B		SHEET METAL WORKER	436-503	02-08-92	AVONDALE
MIZE	LOVETTE	D		PAINTER	456-354	05-04-93	AVONDALE
MOLLO	CLARENCE	J		FITTER WELDER	460-201		AVONDALE
MORSE	LEON	E		WELDER	436-503	09-06-91	AVONDALE
MOSLEY	DON			FIBERGLASS/RUBBER LINING	424-010	04-20-91	AVONDALE
MOSLEY	GILBERT	A		RUBBER LINE	424-010	02-02-91	AVONDALE
MOSS	DANNY			WELDER/FITTER	456-354	02-13-93	AVONDALE
MOSS	KENNETH	W		WELDER	433-992	01-25-92	AVONDALE
MOTICHEK	THOMAS	P		PIPEFITTER	433-992	03-07-92	AVONDALE
MUMME	GEORGE	A		MACHINIST	456-354	04-29-93	AVONDALE
MURPHY	ROBERT	C		SHIPFITTER	424-010	06-29-81	AVONDALE
NICOLOSI	PETER	J	SR	WELDER	460-201	02-23-93	AVONDALE
OATIS	LONNIE		JR	WELDER	460-201	06-05-93	AVONDALE
OCKMOND	MAURICE	J	JR	TACKER/FITTER/SHIPPING AND RECEIVI	424-010	02-02-91	AVONDALE
ORDOYNE	KIRBY			PIPEFITTER/WELDER	424-010	02-23-91	AVONDALE
OVERMAN	EARL	H		WELDER	433-992	03-07-92	AVONDALE
OVIDE	RALPH	H		DRY DOCK CONSTRUCTION	424-010	04-20-91	AVONDALE
PALENZUELA	ANGEL			SHIPFITTER/TACKER	433-992	02-08-92	AVONDALE
PARKER	ERNEST	R		WELDER	433-992	10-05-91	AVONDALE
PARKER	JOHN	R		FITTER	424-010	04-06-91	AVONDALE
PARKS	MELVIN	R		LABORER	424-010	01-26-91	AVONDALE
PARR	ROLAND	J		CLERK/FITTER/COORDINATOR	424-010	06-15-91	AVONDALE
PATERNOSTRO	ELDRED	J		ELECTRICIAN/ ELECTRICIAN HELPER/S	424-010	05-04-91	AVONDALE
PEREZ	CARLOS	J		CLEANUP CAPACITY	424-010	03-23-91	AVONDALE
PEREZ	GARDNER	A		WELDER	424-010	01-25-91	AVONDALE
PERTUIT	WAYNE	F		WAREHOUSE MAN	424-010	01-12-91	AVONDALE

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
PETERSON	RONALD	L		PIPEFITTER/WELDER	444-648		AVONDALE
PHILLIPS	GEORGE	H		LABORER	444-648	06-13-92	AVONDALE
PINELL	THOMAS	G		WELDER	433-992	06-15-91	AVONDALE
PINION	LEROY	J		SHIPFITTER	424-010	02-02-91	AVONDALE
POCHE	LAWRENCE		SR	CHIPPER	456-354	08-07-93	AVONDALE
POLK	JOHNNY	S		LABORER	424-010	04-20-91	AVONDALE
PRAVATA	SAM	A	SR	WAREHOUSE LOADING TRUCK	424-010	08-23-91	AVONDALE
PRESTENBACH	KENNETH	G		WELDER	424-010	02-23-91	AVONDALE
PREVOST	DANNY	D		TACKER	456-354	03-13-93	AVONDALE
PREVOST	DOUGLAS	M		SHIPFITTER	433-992	06-01-91	AVONDALE
PREVOST	TYM	W		SHIPFITTER/TACKER	424-010	06-01-91	AVONDALE
QUAGLINO	ANTHONY	W		TACKER	444-648	09-19-92	AVONDALE
QUAVE	ROGER	H		SHIPFITTER	424-010	06-29-91	AVONDALE
QUINETTE	ERROL	E		MAINTENANCE ELECTRICIAN	426-017		AVONDALE
RABORN	THOMAS	D		SHIPFITTER	424-010	03-23-91	AVONDALE
RAGAS	VICTOR			BURNER	456-354	12-05-92	AVONDALE
RAIFORD	PHILLIP	R		CARPENTER	433-992	02-08-92	AVONDALE
REECH	JAMES	E		WELDER	424-010	06-01-91	AVONDALE
REECH	WILLIE			WELDER BURNER	424-010	06-01-91	AVONDALE
REED	ERBERT			WELDER	424-010	06-29-91	AVONDALE
ROBERTSON	VANCE	R		GENERAL HELPER	433-992	02-08-92	AVONDALE
ROBIN	ALVIN			WELDER	424-010	01-26-91	AVONDALE
ROBIN	ALVIN	G		PIPEFITTER HELPER	424-010	05-04-91	AVONDALE
ROBIN	MICHAEL	G		ENGINE ROOMS OUTFITTING	424-010	01-26-91	AVONDALE
ROBINSON	WILLIE	O		GRINDER	433-992	02-08-92	AVONDALE
RODRIGUE	RANDALL	C		WAREHOUSE RECEIVING CLERK	424-010	02-02-91	AVONDALE
RODRIGUE	SAMUEL	J	SR	TACKER MAINTENANCE	426-017		AVONDALE
ROME	JOSEPH	F	SR	SHIPFITTER	433-992	01-25-92	AVONDALE
RUSHING	J.C.			TACKER/PAINTER/MAINTENANCE MECH	460-201	09-21-93	AVONDALE
SAM	JOSEPH		SR	CLEAN UP DEPARTMENT	436-503	03-07-92	AVONDALE
SANCHEZ	MELVIN	C		SHIPFITTER	424-010	02-23-91	AVONDALE
SHAR	ARTHUR	L		LABORER	424-010		AVONDALE
SHORTY	WILBURT		JR	TACKER FITTER	456-354	02-13-93	AVONDALE
SIETA	CLAUDE	J		WELDER	424-010	05-04-91	AVONDALE
SMELSER	EMMETT	D		WELDER	433-992	01-25-92	AVONDALE
SMITH	RONALD	W		WELDER	424-010	06-01-91	AVONDALE
SNOW	ARTHUR	J		GRINDER/WELDER HELPER/LABORER	456-354	03-20-93	AVONDALE
SNYDER	ROY	R		WELDER TACKER	456-354	05-08-93	AVONDALE
ST AMANT	ALFRED	D		WELDER	433-992	02-08-92	AVONDALE
STANGA	DENNIS	M		SHIPFITTER	424-010	06-29-91	AVONDALE
STANGA	EUAL	L	SR	WELDER	433-992	02-08-92	AVONDALE
STAUDER	ANDREW	J		PIPEFITTER	433-992	02-08-92	AVONDALE
STEVENS	GARY	J		TACKER/SHIPFITTER	424-010	06-01-91	AVONDALE
STEVENS	WALLACE			LABORER	456-354	05-08-93	AVONDALE
STEWART	JIMMY	D			460-201	10-28-93	AVONDALE
STEWART	LONNIE	B		SANDBLASTER/PAINTER	444-648	11-21-92	AVONDALE
STICKER	DAVID	A		TACKER/SHIPFITTER/INSPECTOR	424-010	06-29-91	AVONDALE
STICKER	EVERETT	W		SHIPFITTER	424-010	06-29-91	AVONDALE

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STICKER	GLEN	R		WELDER	424-010	06-15-91	AVONDALE
STICKER	NATHAN	T		TACKER/SHIPFITTER	424-010	04-20-91	AVONDALE
STRUCK	RICHARD			BLASTING/COATING	424-010	05-04-91	AVONDALE
STUMPF	ROBERT	J		TACKER/SHIPFITTER/SHIPFITTER FORE	424-010	01-17-92	AVONDALE
TANNER	JESSE	L		SHIPFITTER	424-010	01-26-91	AVONDALE
TATE	ODA	K		WELDER/SHIPFITTER/BOILER MAKER	433-992	10-19-91	AVONDALE
TAYLOR	EDDIE	L		PAINTER/SANDBLASTER	444-648	06-13-92	AVONDALE
THIBODEAUX	JOSEPH	V		ELECTRICAL STRAPPER/SHIPFITTER	424-010	02-02-91	AVONDALE
THIBODEAUX	STANLEY	J		SHIPFITTER/RIGGING	424-010	01-26-91	AVONDALE
THOMAS	ROBERT	L	SR	PIPEFITTER	444-648	*p1230Y09-[illegible]	AVONDALE
THOMPSON	CLEVELAND	J	JR	WELDER	460-201	11-04-93	AVONDALE
THOMPSON	WILLIAM	H		WELDER	424-010	09-20-91	AVONDALE
TOOMER	MAURICE			PAINTER/SANDBLASTER	456-354	05-08-93	AVONDALE
TORTOMASE	JOSEPH	J		WAREHOUSE MAN	424-010	01-12-91	AVONDALE
TOUPS	DANIEL	J		SHIPFITTER FORMAN	424-010	05-04-91	AVONDALE
TREGRE	RADFORD			SHIPFITTER	424-010	02-23-91	AVONDALE
TURNER	ROBERT		JR	SANDBLASTER	460-201	01-21-94	AVONDALE
USSIN	EDWARD	J		IRONWORKER	456-354	01-16-93	AVONDALE
VEAL	PATRICIA	L		CLERICAL	456-354	06-05-93	AVONDALE
VINING	MELVIN	G		WELDER	433-992	06-15-91	AVONDALE
WAGNON	ROBERT	A	JR	PIPEFITTER HELPER	433-992	02-08-92	AVONDALE
WAINWRIGHT	JAMES	L		WHEEL SHOP	444-648	07-25-92	AVONDALE
WALKER	ROY			MAINTENANCE MAN	456-354	09-17-93	AVONDALE
WASHINGTON	JEROLD	B		LABORER/SANDBLASTER/PAINTER	444-648	07-25-92	AVONDALE
WATKINS	GILBERT	H	JR	WELDER	456-354	05-08-93	AVONDALE
WATSON	VICTOR			SANDBLASTER/PAINTER	433-992	03-07-92	AVONDALE
WEAVER	CLEVE			MACHINIST/TACKER	426-017	09-21-91	AVONDALE
WELCH	LARRY			PIPEFITTER	433-992	12-14-91	AVONDALE
WHITTEN	WINSTON	M	SR	SHIP FITTER/TACKER SHIP FITTER/FITT	444-648	09-19-92	AVONDALE
WILDE	JOHN	G		WELDER	460-899	03-13-93	AVONDALE
WILLIE	HESSIE	E		WELDER	424-010	08-10-91	AVONDALE
WILLIE	JACK	E		PIPEFITTER/WELDER	424-010	08-10-91	AVONDALE
WILSON	LEE	B		PAINTER/LABORER	460-201	09-18-93	AVONDALE
YANCOVICH	MARCUS	L		TACKER	433-992	01-25-92	AVONDALE
ZERINGUE	DENNIS	D		EXPEDITER	424-010	03-22-91	AVONDALE

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
AHYSEN	SIDNEY	N		LABORER	433-992	01-25-92	TODD
AIKMAN	JAMES	A		LABORER	433-992	02-08-92	TODD
ALEXANDER	FRANK		JR	LABORER	456-354	02-13-93	TODD
ALEXANDER	LOUIS			WELDER	444-648	07-25-92	Equitable
ANCAR	LLOYD		SR	LABORER	444-648	10-24-92	TODD
ANDERSON	MOSES			LABORER	444-648	07-25-92	TODD
ANTHONY	GEORGE		JR	LABORER	433-992	03-07-92	Equitable
AUGUSTUS	ERNEST	J		LABORER	456-354	11-21-92	TODD
AUSTIN	HAROLD	L		LABORER	433-992	02-08-92	Equitable
BAILEY	YORK			LABORER/CRANE OPERATOR	424-010	07-20-91	EQUITABLE
BALLARD	WAYNE	C	SR	WELDER	460-201	01-22-94	Equitable
BARDWELL	PERCY	L		LABORER	433-992	04-11-92	Equitable
BARNES	JERRY	W	SR	LABORER	436-503	09-07-91	Equitable
BARNES	JERRY	W	SR	LABORER	436-503	09-07-91	TODD
BARROW	JOSEPH	P		LABORER	456-354	02-13-93	TODD
BARZE	THEODORE			LABORER	433-992	02-08-92	Equitable
BATES	BUNYAN			LABORER	444-648	07-25-92	Equitable
BELL	JAMES			LABORER	433-992	03-07-92	Equitable
BELTON	L. S.			LABORER	444-648	07-25-92	TODD
BEVERLY	JAMES	B		LABORER	424-010	06-15-91	Equitable
BIBBENS	ALBERT	S		GENERAL LABORER	456-354	01-16-93	TODD
BIGNER	ROLLIE	L			464-064	07-24-93	EQUITABLE
BLOW	KENNETH	A		LABORER	424-010	06-15-91	Equitable
BOOTH	WILLIAM	W		TACKER/WELDER	456-354	02-13-93	Equitable
BOUDOIN	JOSEPH	L		SANDBLASTER/PAINTER	444-648	07-25-92	TODD
BOUDREAUX	ALCIDE	B	JR	BOILER MAKER	460-201	01-21-94	TODD
BOURGEOIS	NORMAN			LABORER	433-992	02-08-92	TODD
BOYER	OSCAR	C		LABORER	444-648	09-19-92	TODD
BREAUX	JOHN	J		LABORER	444-648	06-13-92	TODD
BREWER	HOUSTON			PAINTER	444-648	11-21-92	TODD
BRINSON	ROBERT	F		LABORER	456-354		TODD
BROCK	NOAH	L		WELDER/PIPEFITTER HELPER	464-064	11-13-93	EQUITABLE
BROGLIN	FLEMINGS	E		LABORER	456-354	05-08-93	TODD
BROOKS	ALMIRO	A		LABORER	456-354	05-08-93	TODD
BROWN	JOE	S		BLASTER/PAINTER/LATH OPERATOR	456-354	01-16-93	TODD
BRUMFIELD	ALBERT	J	SR	LABORER	444-648	07-25-92	Equitable
BRUMFIELD	OBED			LABORER	444-648	09-19-92	Equitable
CALZADA	CHARLES	J		MACHINEST	460-201	01-21-94	TODD
CAMESE	AUGUST			LABORER	456-354	02-13-93	TODD
CAMUS	ALBERT	L		LABORER	444-648	07-25-92	TODD
CAMUS	ANTHONY	J		LABORER	444-648	10-24-92	TODD
CARTER	DAVID			LABORER	444-648	10-24-92	TODD
CARTER	LOUIS	L	SR	LABORER	433-992	04-11-92	TODD
CARTER	RALPH	D	JR	LABORER	456-354		TODD
CARTER	RAYMOND	L		LABORER	436-503	04-11-92	Equitable
CAUSEY	HOUSTON		JR	LABORER	444-648	11-21-92	Equitable
CAUSEY	HOUSTON		JR	LABORER	444-648	11-21-92	TODD
CENTINEO	JOSEPH	J		LABORER	456-354	01-16-93	TODD

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
CHADWICK	OSBURN	L		LABORER	424-010	06-15-91	Equitable
CHARLES	CALVIN		JR	SHEETMETAL MECHANIC	444-648	09-19-92	TODD
CHARLES	DELANDO			LABORER	456-354	01-16-93	TODD
CHATMAN	CLIFTON	C		LABORER	433-992	03-07-92	TODD
CHEATHAM	DAVID			LABORER	433-992	02-08-92	TODD
CISNEROS	MARCO	T		LABORER	444-648	11-21-92	TODD
CLARK	MORRIS	J		LABORER	433-992	03-07-92	TODD
COGLAITI	CHARLES	B		LABORER	433-992	02-08-92	TODD
COLEMAN	BERNARD	W	SR	LABORER	456-354	02-13-93	TODD
COLEMAN	ROBERT	E		LABORER	456-354	03-13-93	TODD
COLLIER	ROBERT	L	JR	LABORER	424-010		Equitable
COLLIER	ROBERT	L	SR	LABORER	424-010		Equitable
COLOGNE	SCOTT	R		LABORER	426-017		Equitable
CONLEY	GLEN	E	SR	SANDBLASTER	460-201	01-22-94	Equitable
CONLEY	RONALD	G		LABORER	444-648	03-07-92	Equitable
COOPER	SAMUEL	D		LABORER	424-010		Equitable
CORTEZ	JOHN	H	JR	WELDER	460-201	01-21-94	TODD
COSSE	WILLIE	K		LABORER	456-354	01-16-93	TODD
COTTON	WILLIE			PAINTER	460-201	01-22-93	Equitable
CROCKETT	BOBBY	R		WELDER/SHIP FITTER	456-354	03-13-93	EQUITABLE
CROCKETT	GEORGE	M		LABORER	456-354	05-08-93	Equitable
CURTIS	WILL			LABORER	456-354	06-05-93	TODD
DAIGLE	ROBERT	J		LABORER	433-992	01-25-92	TODD
DANIELS	MELVIN			LABORER	456-354	06-05-93	Equitable
DAVIS	BOBBY		SR	CHIPPER	460-201	11-06-93	Equitable
DAVIS	EDWARD	H		LABORER	444-648	09-19-92	TODD
DAVIS	LIONEL	M		LABORER	464-064	10-21-93	EQUITABLE
DAVIS	LOUIS			LABORER	433-992	02-08-92	Equitable
DECLOUET	EDWARD		JR	LABORER	456-354	02-13-93	TODD
DEROCHA	HAROLD	L		LABORER	456-354	02-13-93	TODD
DEVORE	ELMORE	W		LABORER	456-354		TODD
DEWITT	CHARLES	I	SR	SHIP FITTER/PIPEFITTER/WELDER	433-992	02-26-94	EQUITABLE
DOIRON	RONALD	J		LABORER	460-201	05-05-93	Equitable
DONSEREAUX	LEONARD	A		LABORER	456-354	02-13-93	TODD
DORSEY	HERMAN			WELDER	460-201	12-04-93	Equitable
DOUGLAS	JOHN	H		LABORER	436-503	04-11-92	Equitable
DOUGLAS	RUFUS	T		LABORER	456-354	01-16-93	TODD
DOUGLAS	RUIL	C		TACKER/WELDER/SANDBLASTER	433-992	09-20-91	EQUITABLE
DUFRENE	CHARLES	M		LABORER	456-354	03-13-93	TODD
DUPLESSIS	MERVIN	E		LABORER	444-648	10-24-92	TODD
EVERETT	EMMETT	E	SR	LABORER	456-354	05-05-93	TODD
FIGAROLA	JOHN	E		CARPENTER	444-648	07-25-92	TODD
FLOWERS	ERNEST	E		WELDER	444-648	09-19-92	TODD
FLOWERS	LARRY	C	JR	WELDER	444-648	10-24-92	TODD
FREEMAN	GEORGE			PIPEFITTER	444-648	10-24-92	TODD
FRYOU	JOSEPH	H		LABORER	433-992	01-25-92	TODD
FRYOU	RALPH	M	SR	WELDER	444-648	07-25-92	TODD
GARRISON	LIONEL			SANDBLASTER	433-992	03-07-92	TODD

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
GERRETS	MELVIN	E		WELDER	433-992	01-25-92	TODD
GONZALES	LLOYD	C		WELDER/PIPEFITTER	444-648	06-13-92	TODD
GRAVES	MYRTIS			LABORER	444-648	04-11-92	Equitable
GRIFFIN	EDWARD		JR	LABORER	433-992	02-08-92	Equitable
GRUNDMEYER	ENNIS	H		LABORER	444-648	09-19-92	TODD
GUIDROZ	LIONEL	J		LABORER	456-354	02-13-93	TODD
GUILLOT	JESSIE	J		LABORER	456-354	02-13-93	TODD
GUILLOT	LLOYD	J	JR	CARPENTER	444-648	06-13-92	TODD
GUNDERSON	CLIFTON	O		PIPEFITTER	436-503	04-11-92	Equitable
HADLEY	WILSON			LABORER	444-648	10-24-92	TODD
HALLY	BERNELL			LABORER	433-992		Equitable
HAMMOND	ROBERT	E	JR	LABORER	444-648	06-13-92	TODD
HANEY	VERNON			LABORER	433-992	02-08-92	Equitable
HANIBLE	DAN			LABORER	433-992	03-07-92	Equitable
HANO	GILBERT	H		LABORER	433-992	01-18-92	Equitable
HARPER	MARTIN			LABORER	456-354	08-07-93	Equitable
HARRIS	LEVI			LABORER	433-992	02-08-92	Equitable
HARRIS	RAYMOND	L		WELDER BURNER/SHIP FITTER	460-201	07-16-93	EQUITABLE
HARRIS	RAYMOND	L		WELDER BURNER/SHIP FITTER	460-201	07-16-93	TODD
HART	CLEVELAND	J		LABORER	444-648	10-24-92	TODD
HART	ROBERT			LABORER	433-992	03-07-92	Equitable
HAWKINS	DUDLEY	B		WELDER	460-201	01-22-94	Equitable
HAYNES	JOHNELL			LABORER	456-354	08-07-93	Equitable
HEARD	HORACE		JR	LABORER	444-648	09-19-92	TODD
HENDERSON	BRISCO		JR	LABORER	433-992	02-08-92	Equitable
HENDERSON	DANIEL			LABORER	426-017	09-07-91	Equitable
HENDERSON	JAMES	J		LABORER	433-992	03-07-92	Equitable
HENDERSON	JUNIOR			LABORER	456-354	02-13-93	EQUITABLE
HENDERSON	NORMAN			LABORER	433-992	02-08-92	Equitable
HENDERSON	RUBEN		SR	LABORER	456-354		Equitable
HENNING	CYRIL	A		LABORER	456-354	01-16-93	TODD
HENRY	JEROME			LABORER	444-648	06-25-92	TODD
HENRY	JOHN		JR	LABORER	444-648	06-13-92	TODD
HENRY	LEO			SANDBLASTER	456-354	01-16-93	TODD
HIATT	DONALD	D		WELDER	433-992	08-09-91	EQUITABLE
HILL	CLYDE	L		LABORER	433-992	03-07-92	TODD
HILL	ELLIOT			LABORER	444-648	07-25-92	TODD
HINTZ	WILLIAM	C		LABORER	433-992	04-11-92	TODD
HOGAN	EDDIE	L		LABORER	444-648	07-25-92	Equitable
HOLLINGSWORTH	EDDIE			LABORER	456-354	06-05-93	TODD
HUGHES	JOSEPH	H	JR	PIPEFITTER/LABORER	433-992	04-11-93	TODD
HUMBLE	ANDREW	A		LABORER	456-354	01-16-93	TODD
HUTZLER	CHARLES	P	SR	CRANE OPERATOR	444-648	09-19-92	TODD
ISAAC	HAROLD			LABORER	444-648	09-19-92	TODD
JACKSON	ELLIS		JR	LABORER	460-201	11-06-93	TODD
JACKSON	HENRY			LABORER	444-648	10-24-92	TODD
JACKSON	WILLIE	E		LABORER	433-992	03-07-92	Equitable
JAMES	JESSE	B		WELDER	444-648	10-24-92	TODD

Number of Records : 300

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
JAMES	RICHARD	R		LABORER	433-992	02-08-92	Equitable
JENKINS	BENJAMIN			WELDER/FITTER	456-354	01-16-93	Equitable
JENKINS	BENNIE	A		SHIP FITTER/INSULATOR	444-648	09-19-92	Equitable
JENKINS	FRANK	L		LABORER	456-354	02-13-93	Equitable
JENKINS	FRANK	L		LABORER	456-354	02-13-93	TODD
JENKINS	FREDERICK			LABORER	436-503	04-11-92	Equitable
JENKINS	MIKE	V		WELDER	456-354	02-13-93	Equitable
JENKINS	OTHA	R		WELDER	433-992	08-10-91	EQUITABLE
JENKINS	SHELBY			WELDER	426-017	09-07-91	Equitable
JENNINGS	CLEMARD			LABORER	460-201	11-05-93	Equitable
JOHNSON	ALVIN	L		IRONWORKER/WELDER	460-201	08-07-93	TODD
JOHNSON	CHARLIE			SANDBLASTER/PAINTER	433-992	02-08-92	Equitable
JOHNSON	ENOS			LABORER	444-648		TODD
JOHNSON	FRED		JR	DOCK HAND	444-648	09-19-92	TODD
JOHNSON	SILAS			SANDBLASTER/PAINTER	433-992	04-11-92	Equitable
JOHNSON	VERNELL			PAINTER/SANDBLASTER	433-992	03-07-92	EQUITABLE
JOINER	MELVIN	W		LABORER/PAINTER/SANDBLASTER	433-992	08-24-91	Equitable
JUBAN	NELSON	L		WELDER	456-354	02-13-93	Equitable
KASS	ELDRIDGE	M		IRON WORKER/MECHANIC	433-992	02-08-92	TODD
KAYWOOD	HARRISON		SR	LABORER	444-648	11-21-92	TODD
KENNEDY	AUBREY	L		PIPEFITTER	433-992	02-08-92	TODD
KENNEDY	DANIEL	R		MECHANIC/WELDER	436-503	02-08-92	TODD
KILLEEN	MICHAEL	J		CARPENTER	456-354	01-16-93	TODD
KING	FLOYD	L		WELDER	456-354	01-16-93	Equitable
KING	HERBERT	H		LABORER	456-354	02-13-93	Equitable
KING	HERBERT	H		LABORER	456-354	02-13-93	TODD
KOEPP	JOSEPH			SHIPFITTER/HEAVY EQUIP OPERATOR	433-992	03-07-92	Equitable
KOPPENOL	WILLIAM	T		TACKER FITTER/WELDER	433-992	03-07-92	EQUITABLE
KRAFT	RAY	M		WELDER	444-648	09-19-92	Equitable
KUHN	EARL	R		WELDER	426-017	09-07-91	Equitable
LANDRY	LARRY	L		CARPENTER HELPER/MECHANIC	433-992	04-11-92	TODD
LANE	ANDREW	J		INSULATOR	444-648	07-25-92	Equitable
LARPENTER	EMERY			FOREMAN	424-010		Equitable
LARPENTER	JAMES	N		TACK FITTER BURNER/SHIPFITTER	424-010	06-15-91	Equitable
LEBLANC	CLEOPHAS	L		SHIP FITTER	444-648	07-25-92	TODD
LEBLANC	IVY	R		WELDER	436-503	02-08-92	Equitable
LEE	NORMAN	E		SHIPFITTER	444-648	11-21-92	Equitable
LEE	RAYMOND	F		WELDER	436-503	10-05-91	Equitable
MANALE	JOSEPH	N	SR	PIPEFITTER/FIRE WATCHER	444-648	09-19-92	TODD
MARTIN	JOSEPH		JR	LABORER	456-354	03-13-93	TODD
MARTIN	JOSEPH	M		LABORER	444-648	06-13-92	TODD
MARTIN	LARRY	J		MACHINIST	456-354	06-05-93	TODD
MARTIN	THEODORE			SANDBLASTER/PAINTER/DOCK HAND	456-354	11-21-92	TODD
MASCAIR	DAVID	E		WELDER/PIPEFITTER/BURNER/PAINTER	424-010	06-15-91	Equitable
MASCAIR	EMILE	T		PIPEFITTER	433-992		Equitable
MASCAIR	THOMAS	A		WELDER/PIPEFITTER	424-010	06-15-91	Equitable
MATTHEWS	DAIRL			WELDER/SHIP FITTER	433-992	06-01-91	Equitable
MATTHEWS	LILLIE	M		PIPEFITTER HELPER	456-354	02-13-93	TODD

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Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
MCCALEB	JAMES			PAINTER	460-201	05-08-93	TODD
MCCALEBB	EDWARD		SR	SANDBLASTER/SPRAY PAINTER	444-648	07-25-92	TODD
MCCALLON	HENRY			SANDBLASTER	444-648	10-24-92	TODD
MCCLENDON	LOUIS			SANDBLASTER/PAINTER	444-648	10-24-92	Equitable
MCGARY	BEN			LABORER/PAINTER/SANDBLASTER/RIG	424-010	07-20-91	Equitable
MCGARY	HENRY		JR	SANDBLASTER	433-992	01-25-92	Equitable
MCGARY	HUEY			RIGGER/LABOR DEPARTMENT	436-503	10-05-91	EQUITABLE
MCGARY	JOHNNY			LABORER/BLACKSMITH	424-010	07-20-91	EQUITABLE
MCGARY	LAWRENCE	J		LABORER	433-992	01-25-92	Equitable
MCGARY	PAUL	J		LABORER/FOREMAN	424-010	07-20-91	Equitable
MCGEE	ISAIAH			LABORER	456-354	11-21-92	TODD
MCGEE	NATHANIEL			IRON WORKER	433-992	03-07-92	TODD
MCKINNEY	ROBERT	R		SHIPFITTER/INSULATOR	424-010	06-15-91	Equitable
MEYERS	BOBBY	L		INSULATOR/WELDER	444-648	12-04-93	Equitable
MILLER	WALTER			LABORER	456-354	08-07-93	TODD
MITCHELL	DWIGHT	J		PIPEFITTER/LABORER	433-992	01-25-92	TODD
MOLAISON	JACKSON	L		ELECTRICIAN	444-648	06-13-92	TODD
MORGAN	HEBERT	L		EQUIPMENT OPERATOR	456-354	02-13-93	TODD
MORMAN	ROBERT			RIGGER/PRESS OPERATOR	444-648	04-11-92	Equitable
MORSE	LEON	E		WELDER	436-503	09-06-91	Equitable
MOSLEY	BEHRMAN			SANDBLASTER/PAINTER/TANK CLEANE	444-648	06-13-92	TODD
MOSLEY	MICHAEL	O		LABORER	456-354	02-13-93	TODD
MOTICHEK	GEORGE	S		SHIPFITTER	433-992	04-11-92	Equitable
MOTICHEK	JOHNNY	M		WELDER	433-992	03-07-92	Equitable
MOTICHEK	THOMAS	P		PIPEFITTER	433-992	03-07-92	Equitable
MURPHY	DONALD	H	SR	MECHANIC	444-648	07-25-92	TODD
MURPHY	JAMES	E	SR	WELDER	424-010	06-15-91	Equitable
MUSACCHIA	JOSEPH	F	SR	MACHINIST/MACHINIST FORMAN	444-648	06-13-92	TODD
NICOLOSI	PETER	J	SR	WELDER	460-201	02-23-93	Equitable
NOIL	RONALD			LABORER	444-648	10-24-92	TODD
NUNNERY	ELDON	J		ELECTRICIAN/ELECTRICIAN FOREMAN	444-648	07-25-92	TODD
ORGERON	GEORGE	W		CRANE OPERATOR	444-648	09-19-92	TODD
OUBRE	JOSEPH	L		SHEET METAL MECHANIC	456-354	02-13-93	Equitable
PARR	HENRY	J		ELECTRICIAN	456-354	02-13-93	TODD
PEA	CLAUDE			GRINDER	433-992	02-08-92	Equitable
PEA	EDWARD	L		LABORER	433-992	02-08-92	Equitable
PEA	JAMES	E		PAINTER/SANDBLASTER	433-992	02-08-92	Equitable
PEA	WILL			LABORER	433-992	02-08-92	Equitable
PERDUE	KENNETH			PIPEFITTER HELPER/WELDER/FITTER/B	444-648	07-25-92	TODD
PERRILLOUX	ELVIS			SHIPFITTER	426-017	09-07-91	Equitable
PETERSON	RONALD	L		PIPEFITTER/WELDER	444-648		Equitable
PETRIE	LIONEL	G	JR	MAINTENANCE WELDER	460-201	12-03-93	Equitable
PETTIGREW	RAYMOND	H		PIPEFITTER	433-992	03-07-92	TODD
PIGOTT	CLINTON			SANDBLASTER/PAINTER	433-992	04-11-92	EQUITABLE
PITRE	ALBERT	P		WELDER/WELDER HELPER	444-648	06-13-92	TODD
PITRE	RALPH	J		LABORER	444-648	07-25-92	TODD
POLEZCEK	ROBERT	L		SHIPFITTER/SHIPFITTER FOREMAN	444-648	11-21-92	EQUITABLE
POLITE	FERDINAND			LABORER	433-992	03-07-92	TODD

Number of Records : 300

JANUARY 1996 PLAINTIFFS

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
POLLARD	COLLIN	C		PAINTER/SANDBLASTER/BURNER	456-354	05-08-93	TODD
PORTER	MORSIE	L		PUNCH PRESS FEEDER	456-354	12-04-92	TODD
RAIFORD	WALTER	H		SHIPFITTER	433-992	03-07-92	EQUITABLE
RANKIN	MAE	O		CRANE DEPARTMENT	444-648	10-24-92	TODD
RHODES	HERMAN		JR	POT REPAIR	460-201	12-04-93	TODD
RICARD	ARTHUR			LABORER	456-354	08-07-93	TODD
RICHARD	ANDREW	J		SHIPFITTER	456-354	06-05-93	TODD
RICHARD	RAYMOND	P	SR	MACHINIST HELPER/MACHINIST FOREM	444-648	11-21-92	TODD
RICHARDSON	PAUL	R		PIPEFITTER/MACHINIST	433-992	01-25-92	TODD
RIGGINS	JOSEPH		SR	LABORER	456-354	01-16-93	TODD
ROSS	CLARENCE			BOILER MAKER/TANK WASHER	444-648	07-25-92	TODD
ROY	ERNEST	W		LABORER	456-354	02-13-93	TODD
RUSSELL	SYLVESTER			PAINTER	433-992	02-08-92	EQUITABLE
SAPIA	HARRY	J		BOILER MAKER/REPAIRMAN	444-648	09-19-92	TODD
SERPAS	LEON	S		CARPENTER HELPER	433-992	03-07-92	TODD
SHEAFFERS	WEST		JR	PIPEFITTER HELPER	460-201	01-22-94	TODD
SIMONSON	ARTHUR	M	SR	WELDER	433-992	01-25-92	TODD
SMITH	STERLING	L		SHIPFITTER HELPER/SUPERITENT	433-992	09-21-91	EQUITABLE
SMITH	TERRY	R		TACKER	456-354	02-13-93	EQUITABLE
SPERANDEO	RONALD	S		WAREHOUSE	424-010	01-30-91	EQUITABLE
STANGA	STEPHEN	M		ELECTRICIAN/SHIPFITTER/WELDER	433-992	06-29-91	EQUITABLE
STEIN	JOHN	W		SHIPFITTER	444-648	06-13-92	EQUITABLE
STEIN	KENNETH	P		WELDER	433-992	02-08-92	EQUITABLE
STENGER	CLAYTON	A		ELECTRICIAN	456-354	03-13-93	TODD
STERLING	TIMOTHY			CLEAN UP/INSULATION	444-648	11-21-92	TODD
STRICKLAND	JESSIE	R		WELDER	460-201		EQUITABLE
TEMPLET	IRVIN	F		MACHINIST	460-201	01-21-94	TODD
THOMAS	EUGENE	F		SANDBLASTER/PAINTER/SCALER	433-992	04-11-92	TODD
TIERNEY	AUGUST	A		SHEET METAL WORKER	444-648	09-19-92	TODD
TIERNEY	EUGENE	J	SR	WELDER/WELDER HELPER	444-648	06-13-92	TODD
TRANCHINA	JOSEPH	V		PIPEFITTER	444-648	09-19-92	TODD
TREADAWAY	MALCOLM	L		PAINTER	444-648	07-25-92	TODD
TROSCLAIR	ANGELO	J	JR	BOILER MAKER HELPER	456-354	05-08-93	TODD
TULLIER	JOHN	N		BOILER MAKER/IRON WORKER	456-354	05-08-93	TODD
VALENTI	PETER	P		WELDER	460-899	04-24-93	EQUITABLE
VALENTI	TONY	M		WELDER	460-899	04-24-93	EQUITABLE
VAN HEES	JOHN	W		PIPEFITTER	433-992	01-25-92	TODD
VINTERELLA	ANTHONY			MACHINIST	433-992	01-25-92	TODD
WAGER	JAMES	A	SR	MACHINIST	433-992	04-11-92	EQUITABLE
WALLACE	EDWARD			TACKER/WELDER	424-010	06-15-91	EQUITABLE
WALTER	ROBERT			PLATE SHOP MECHANIC/WELDER	444-648	06-13-92	TODD
WASHINGTON	ALEXANDER			LABORER	444-648	10-24-92	TODD
WASHINGTON	JEROLD	B		LABORER/SANDBLASTER/PAINTER	444-648	07-25-92	TODD
WATTIGNEY	MILTON	J		WELDER/SHIP FITTER	444-648	06-13-92	TODD
WEATHERSBY	DAVID			LABORER/WELDER	436-503	03-07-92	EQUITABLE
WEATHERSBY	LAWRENCE			WELDER	433-992		EQUITABLE
WEST	HAROLD	J		LABORER	444-648	07-25-92	TODD
WHELAN	JOHN	J		MECHANIC	460-201	01-21-94	TODD

Number of Records : 300

Last Name	First Name	MI	Sub	Occupation	Case ID	DATE DX	Site
WHITE	CLIFFORD	J		LABORER	456-354	11-21-92	TODD
WHITLEY	GRAYLON			WELDER	444-648	10-24-92	TODD
WILKERSON	ROBERT	W		SANDBLASTER/PAINTER	456-354	03-13-93	TODD
WILLIAMS	CLARENCE		SR	RIGGER	444-648	09-19-92	EQUITABLE
WILLIAMS	JOSEPH	W	JR	TACKER/WELDER/INSULATOR/PAINTER	444-648	04-11-92	EQUITABLE
WILLIAMS	JOSEPH	W	SR	SHIPFITTER/BURNER/WELDER	436-503	04-11-92	EQUITABLE
WILLIAMS	LARRY			WELDER	433-992	04-11-92	EQUITABLE
WILLIAMS	LIONELL			LABORER/PAINTER	444-648	07-25-92	TODD
WILLIAMS	TEDDY	L		PAINTER/SANDBLASTER	433-992	04-11-92	EQUITABLE
WILLIE	AVERY	H		SHIPFITTER	433-992	01-25-92	EQUITABLE
WILLIFORD	BILLY	R		LABORER/RIGGER/BOILER MAKER	444-648	10-24-92	TODD
WILSEY	CHARLES	F		PIPEFITTER/MACHINIST/MACHINE FORE	444-648	09-19-92	TODD

Number of Records : 300

APPENDIX B

TWENTY-FOURTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NUMBER 424-010 DIVISION "J"

DOUGLAS R. ABADIE, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 433-992 DIVISION "J"

ALFRED J. ADAMS, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 460-201 DIVISION "J"

TOMMY LEE ADDISON, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 444-648 DIVISION "J"

FELIX R. ALBERT, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 456-354 DIVISION "J"

FRANK ALEXANDER, JR., ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 436-503 DIVISION "J"

JERRY W. BARNES, SR., ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NUMBER 464-064 DIVISION "J"

ROLLIE BIGNER, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

FILED: _____ _____

Deputy Clerk

ORDER

Considering the Motion for Summary Judgment of the defendants, Fidelity & Casualty Insurance Company of New York n/k/a Continental Insurance Company, Hanover Insurance Company, and The Travelers Insurance Company (hereinafter the alleged "Todd Insurers"), for the Managers, Directors and Executive Officers of Todd Shipyards – New Orleans Division, on the ground that the plaintiffs' exclusive remedy against the executive officers of Todd Shipyards is under the Longshore and Harbor Workers' Compensation Act;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that defendants' Motion for Summary Judgment is DENIED.

Gretna, Louisiana, this 6th day of March, 1995.

/s/ Jacob L. Karno
DISTRICT JUDGE KARNO

APPENDIX C

DOUGLAS ABADIE, ET AL.	**NO. 95-C-284**
VERSUS	**COURT OF APPEAL**
METROPOLITAN LIFE INSURANCE COMPANY, ET AL.	**FIFTH CIRCUIT STATE OF LOUISIANA**

WRITS REFUSED.

We find that the claims of plaintiffs against relators/defendants, the insurers of Todd Shipyards, are speculative at this time because respondents/plaintiffs allege that their illness and/or disabilities were contracted by them during the "1970s" and "1980s." Consequently, we see numerous questions of material fact involved at this time preventing the granting of summary judgment in favor of relators.

We further are of the opinion that this decision is governed, in part, by *Cole v. Celotex Corporation*, 599 So.2d 1058 (La. 1990) and writs are refused at this time also because relators may reurge this issue in the event of an adverse judgment.

Gretna, Louisiana, this 27th day of April, 1995.

/s/ FB
JUDGE FRED S. BOWES

/s/ TCW Jr.
JUDGE THOMAS C. WICKER, JR.

/s/ SG
JUDGE SOL GOTHARD

A TRUE COPY

GRETNA APR 27, 1995

/s/ Peter J. Fitzgerald, Jr., CLERK
COURT OF APPEAL,
FIFTH CIRCUIT

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

DOUGLAS ABADIE, ET AL

VS. NO. 95-CC-1326

METROPOLITAN LIFE
INSURANCE COMPANY, ET AL

IN RE: Todd Shipyards Corporation; Hanover Insurance Co.; Fidelity & Casualty Inc. Co. NY; Travelers Insurance Co.; – Defendant(s); Applying for Supervisory and/or Remedial Writs; to the Court of Appeal, Fifth Circuit, Number 95-CV-0284; Parish of Jefferson 24th Judicial District Court Div. "J" Number 424-010

June 23, 1995

Denied.

PFC

WFM

JLD

JCW

JPV

JOHNSON, J. not on panel.

Supreme Court of Louisiana
June 23, 1995

/s/ Frans J. LaBranche, Jr.
Clerk of Court
For the Court

APPENDIX E

CHAPTER 18 – LONGSHORE AND HARBOR WORKERS' COMPENSATION

§ 933. Compensation for injuries where third persons are liable

(a) Election of remedies

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of compensation operating as assignment

Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term "award" with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.

(c) Payment into section 944 fund operating as assignment

The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee

Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee

Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to –

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or the representative.

(f) Institution of proceedings by person entitled to compensation

If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

(g) Compromise obtained by person entitled to compensation

(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter.

(3) Any payments by the special fund established under section 944 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment

rendered against a third person referred to under subsection (a) of this section. Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

(4) Any payments by a trust fund described in section 917 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a) of this section. Such lien shall have priority over a lien under paragraph (3) of this subsection.

(h) Subrogation

Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) Right to compensation as exclusive remedy

The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: *Provided,* That this provision shall not affect the liability of a person other than an officer or employee of the employer.

(Mar. 4, 1927, c. 509, § 33, 44 Stat. 1440; June 25, 1938, c. 685, §§ 12, 13, 52 Stat. 1168; Aug. 18, 1959, Pub.L. 86-171,

73 Stat. 391; Oct. 27, 1972, Pub.L. 92-576, § 15(f)-(h), 86 Stat. 1262; Sept. 28, 1984, Pub.L. 98-426, § 21, 98 Stat. 1652.)

(2)

No. 95-480

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1995

FIDELITY AND CASUALTY COMPANY OF NEW YORK, THE HANOVER INSURANCE COMPANY, and THE TRAVELERS INSURANCE COMPANY,

Petitioners,

versus

SIDNEY N. AHYSEN, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Louisiana

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case involves pretrial motion practice and all issues are still subject to appellate review at the state level. The appeal court decision, denying writs, recognized that there were numerous questions of material fact preventing the court from granting the requested summary judgment. (App. A). Moreover, the court recognized that relators may reurge this issue in the event of an adverse judgment. (App. A). The Louisiana Supreme Court, apparently recognizing that the case was not ripe for appeal, denied writs. (App. B). Importantly and contrary to Petitioners' assertions, Plaintiffs did not concede that these claimants were covered by Longshore Harbor Workers' Act 33 U.S.C. 901 *et seq.* (LHWCA) in the lower courts. Whether each and every claimant is covered by the LHWCA is a factual matter to be decided at the trial on the merits.[1]

Respondents were workers for Todd Shipyards (Todd), and other shipyards, between the years 1938 and approximately 1976. In the course of their duties they were regularly exposed to asbestos dust resulting in severe and life threatening injuries. Among others, Respondents have sued certain employees of Todd (executive officers) and their insurers, as allowed by Louisiana law. Respondents' pre-1976 exposures, gave rise to their substantive tort rights to bring these co-employee actions

---

[1] As plaintiffs indicated in their brief to the Louisiana Supreme Court, the record is completely void of any evidence which would indicate which compensation scheme has jurisdiction over these cases, or when the individual plaintiffs' onset of disability began.

under Louisiana law. In 1990, the Louisiana Workers Compensation law was amended to eliminate the dual remedy compensation, and exclusive compensation coverage, under the LHWCA. In any event, the subsequent amendment to Louisiana Workers Compensation law cannot effect a change of substantive right.

In asbestos cases, the law is clear. The court is to apply the law in effect at the time of the injury producing harm. Once the plaintiff is harmed, he has acquired a vested property right (tort action) that may not constitutionally be divested.

SUMMARY OF ARGUMENT

1) The judgments that Petitioners seek relief from merely denied summary judgment and retained all issues for trial. The judgment denying summary judgment was not a final judgment. Therefore, these issues are not ripe for this Court's intervention.

2) For the sake of argument, Respondents will assume these workers are all covered by LHWCA. Since 1972, an area of concurrent jurisdiction existed whereby an injured harbor worker had the choice of federal law or state law in the dockside area, where federal compensation law was extended under the 1972 amendments to the LHWCA. Before 1972, state law was exclusive in this dockside area. During this time, Louisiana law allowed, in addition to traditional workers compensation remedies, in certain circumstances, an injured worker to also bring an action against a co-employee for occupational diseases involving exposure to work place toxins prior to 1976, the date that the co-employee rights against manufacturers in negligence were eliminated. A plaintiff may still maintain these actions. In 1990, the state statute was amended to make the LHWCA the exclusive compensation remedy, an area which had heretofore fallen under concurrent federal and state jurisdiction.

3) The law in place at the time of exposure to asbestos dust is the applicable law in tort cases, as opposed to worker's compensation cases.

ARGUMENT

1. Question Presented Is Not Important

The question presented in this case regards a trial court's refusal to grant summary judgment forcing the Petitioner to re-assert its argument at trial. A refusal of this writ of certiorari will not affect this issue. The Louisiana Supreme Court's disposition on the writ application states that writs were denied. (App. B). The Louisiana Supreme Court's decision was made after the Louisiana Fifth Circuit Court of Appeal had thorqughly analyzed the issue. The Louisiana Fifth Circuit Court of Appeal stated:

> Consequently, **we see numerous questions of material fact** involved at this time preventing the granting of summary judgment in favor of relators.
>
> We further are of the opinion that this decision is governed, in part, by *Cole v. Celotex Corporation*, 599 So.2d 1058 (La. 1992) and writs are refused at this time also because **relators may reurge this issue** in the event of an adverse judgment. (App. A). (Emphasis Added)

This question does not warrant the Louisiana Supreme Court's review, much less the review of U.S. Supreme Court.

Petitioners rely on 28 U.S.C. § 1257(a) for jurisdiction in this case. However, the United States Supreme Court's jurisdiction to review a state court's decision is generally limited to final judgments rendered by the highest court of the state in which the decision may be had. *Flynt v.*

Ohio, 451 U.S. 619 (1981). In the instant case, it is undisputed that the petitioners "may reurge this issue in the event of an adverse judgment." (App. A).

If the issue was not presented to state courts in such a manner that it was necessarily decided by the highest state court, the U.S. Supreme Court would have no power to consider the issue. *Street v. New York*, 394 U.S. 576 (1969). Again, this issue is not ready for review by the Louisiana Appellate or Supreme Court, much less the U.S. Supreme Court.

The requirement that final judgment or decree be rendered by the highest court of the state before the U.S. Supreme Court may intervene in state litigation is not a mere technicality to be easily scorned, but an important factor in the smooth working of our federal system. *Montgomery Buildings Const. Trades Council v. Ledbetter Erection Co.*, 344 U.S. 178 (1952).

Moreover, the state law was amended in 1976 and again in 1990 to eliminate both executive officers' liability and concurrent jurisdiction. Therefore, the question is moot and does not warrant U.S. Supreme Court review.

2. Under Pre-1976 Law, There is Concurrent Jurisdiction

On the other hand, in workers compensation cases the relevant consideration is the date the worker became disabled. *Smith v. Gretna Machines and Ironworks*, 646 So.2d 1096, 1098 (La. App. 5th Cir. 1984); *Dempster v. Avondale Shipyards, Inc.*, 643 So.2d 1316 (La. App. 5th Cir. 1994); *Stelly v. Overhead Door Company of Baton Rouge*, 646

So.2d 905, 910 (La. 1994). In the ***present*** case, no claim for workers compensation has been filed.

In addition, if amendments to the Louisiana Workers Compensation law could work to divest Respondents of substantive rights acquired at the time of exposure, the law would be unconstitutional under both the federal and state constitutions and it should surely not be so construed. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). A cause of action in tort is a property right; once a property right accrues it becomes a vested property right that may not constitutionally become divested. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). In asbestos cases, a cause of action accrues when the victim breathes the injury producing dust. See *Cole*. Therefore, once a plaintiff breathes the dust, he has sustained an injury producing harm, a tort action, and that vested property right that may not be constitutionally divested.

Petitioners' discussion of preemption (Brief pages 9-13) misses the point. Where two statutory schemes, one state and one federal are viewed as concurrent, preemption was not intended. In concurrent jurisdiction cases, the parties take the state law as it is and the federal law as it is. If the plaintiff chooses federal law, he must abide by it; if he chooses state law, he must abide by it. ***This is what concurrent jurisdiction means.***

If preemption occurs the laws are no longer concurrent. This was the meaning recognized by the Louisiana Supreme Court in the *Poche* case. *Poche v. Avondale Shipyards, Inc.*, 339 So.2d 1212 (La. 1976).

Respondents in the present case have asserted no claims under the LHWCA. Instead, they are pursuing

state tort claims which were fully allowed when their exposure took place and their property right was vested. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992).

It should be remembered that before the 1972 amendments to the LHWCA, Louisiana law, with its co-employee liability, had exclusive jurisdiction in the dock-side area relevant to the present case. It was certainly not Congress' intent to displace this existing law in 1972. *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980); *Poche v. Avondale Shipyards, Inc.*, 339 So.2d 1212 (La. 1976).

In fact, in the case of *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715 (1980), this Court held that preemption did not take place between the two statutory schemes.

> We, therefore, find no sign in the 1972 amendments . . . that Congress worked to alter the accepted understanding that federal jurisdiction would co-exist with state compensation laws in that field in which the latter may constitutionally operate.

Sun Ship, 447 U.S. at 722.

3. The Controlling Law Is That Which Is In Effect At The Time Of Exposure

The controlling point in time ***in tort actions*** is "exposure" to the injury producing harm. *Coates v. A.C. and S., Inc.*, 844 F.Supp. 1126, 1131 (E.D.La. 1994); *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). Central to asbestos cases is the fact that they are characterized by lengthy latency periods, as much as several decades. Because of this, the traditional concepts of "wrongful act and resulting damages" makes little sense in this context; instead, the courts

have looked to the "key relevant events" (accident) in fixing the time periods applicable. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). The courts have further construed this as the date of the "accident," which in an asbestos case would be synonymous with exposure (all pre-1976). *Koker v. Armstrong Cork, Inc.*, 804 P.2d 659 (Wash. App. 1991); *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). It is the exposure which produces the injury, no matter when this occurs. The significant event is the exposure without which there would be no injury. *Coates v. A.C. and S., Inc.*, 844 F.Supp. 1126, 1131 (E.D. La. 1994); *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992).

CONCLUSION

The judgment from which Petitioners seek relief is not a final judgment; therefore, this issue is not ripe for this court's intervention. For this reason, as well as all other reasons heretofore stated, the writ of certiorari should be denied.

Respectfully submitted,

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EXHIBIT A

DOUGLAS ABADIE, ET AL.

VERSUS

METROPOLITAN LIFE INSURANCE COMPANY, ET AL.

NO. 95-C-284

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

WRITS REFUSED.

We find that the claims of plaintiffs against relators/defendants, the insurers of Todd Shipyards, are speculative at this time because respondents/plaintiffs allege that their illness and/or disabilities were contracted by them during the "1970s" and "1980s." Consequently, we see numerous questions of material fact involved at this time preventing the granting of summary judgment in favor of relators.

We further are of the opinion that this decision is governed, in part, by *Cole v. Celotex Corporation*, 599 So.2d 1058 (La.1990) and writs are refused at this time also because relators may reurge this issue in the event of an adverse judgment.

Gretna Louisiana, this 27th day of April, 1995.

/s/ FB
JUDGE FRED S. BOWES

/s/ TCW, Jr
JUDGE THOMAS C. WICKER, JR.

/s/ SG
JUDGE SOL GOTHARD

A TRUE COPY

GRETNA APR 27 1995 19__

/s/ Peter J. Fitzgerald, Jr.
CLERK
COURT OF APPEAL,
FIFTH CIRCUIT

THE SUPREME COURT OF THE STATE OF LOUISIANA

DOUGLAS ABADIE, ET AL

VS. NO. 95-CC-1326

METROPOLITAN LIFE INSURANCE COMPANY, ET AL

IN RE: Todd Shipyards Corporation; Hanover Insurance Co.; Fidelity & Casualty Inc.Co.NY; Travelers Insurance Co.; – Defendant(s); Applying for Supervisory and/or Remedial Writs; to the Court of Appeal, Fifth Circuit, Number 95-CW-0284; Parish of Jefferson 24th Judicial District Court Div. "J" Number 424-010

June 23, 1995

Denied.

PFC
WFM
JLD
JCW
JPV

JOHNSON, J. not on panel.

Supreme Court of Louisiana
June 23, 1995

/s/ Fran J. LaBranche, Jr.
Clerk of Court
For the Court

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(3)

No. 95-480

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

FIDELITY AND CASUALTY COMPANY OF NEW YORK, THE HANOVER INSURANCE COMPANY, and THE TRAVELERS INSURANCE COMPANY,

Petitioners,

versus

SIDNEY N. AHYSEN, ET AL,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Louisiana

REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

1. The Federal Issue is Squarely Framed for Determination.

Respondents assert that these cases are not "ripe" while at the same time admitting the facts necessary to determine the federal questions presented. Respondents' opposition does not challenge that they are ship repair workers of a covered employer, or that they were exposed to asbestos while engaged in ship repair work at Todd.

Indeed, the briefing in the state district court established that "there is no dispute that the plaintiffs were engaged in ship repair work and were 'employees' within the meaning of the LHWCA. Nor is there any dispute that Todd Shipyards properly secured compensation under the LHWCA that would cover eligible employees." Todd's Mem. in Support of Motion for Summary Judgment, 2/21/95, p. 5. Respondents have never challenged these statements. Respondents conceded coverage and openly admitted that "[i]n 1972 the LHWCA was amended to reach landward and *cover shipyard workers like the plaintiffs*." Pl. Mem. in Opp. to Summary Judgment, 3/3/95, p. 3.[1] There simply are no other facts necessary to determine the federal issues presented.

---

[1] Moreover, since Petitioners filed the Motion for Summary Judgment, all of the plaintiffs scheduled for trial in January, 1996, have been deposed and all but one alleged that they were exposed to asbestos while engaged in ship repair work on ships at Todd's New Orleans ship repair facility. The one plaintiff who did not work on ships worked in the store room on the wharf supplying materials to the ship repair workers.

The only factual issue suggested by Respondents is "when the individual plaintiff's onset of disability began." Response to Petition, p. 1, n.1. This assertion is based on the intermediate state appellate court's statement that there were factual issues involved "because respondents/plaintiffs allege that their illness and/or disabilities were contracted by them during the 1970s and 1980s." Petition for Writ, App. C. But whether the illnesses or disabilities were contracted by the plaintiffs in the 1970s or 1980s is completely irrelevant for purposes of determining LHWCA exclusivity.

The LHWCA's provision extending tort immunity to co-employees was enacted in 1959, and it applies to this action regardless of whether the illness was "contracted" in the 1970s or 1980s. 33 U.S.C. § 933(i); Pub.L. 86-171 (1959). Coverage under the LHWCA is triggered on the date the plaintiff becomes aware that his illness is or may be job-related. 33 U.S.C. § 912(a). Thus, as a matter of federal law, it does not matter when the plaintiff was exposed or when the illness was contracted; the only relevant fact is the date the plaintiffs became aware that the illness may be related to their employment. In these cases, the plaintiffs admit that they all were first diagnosed some time after 1991. Petition for Writ, App. A. The applicability of Section 933(i) is triggered at that time, and further factual development on the dates of exposure or contraction will not affect the exclusivity analysis.

2. Louisiana Will Continue To Ignore Section 933(i).

Respondents contend that the state workers' compensation law allowing suits against co-employees was

amended in 1976 and 1990 to eliminate co-employee liability and concurrent jurisdiction, and conclude that "the question is moot and does not warrant U.S. Supreme Court review." Response to Petition, p. 5. But Respondents ignore that these cases began after both of these state law amendments were in effect. Notwithstanding these amendments, the Louisiana Supreme Court is giving plaintiffs a cause of action against co-employees by applying legislative rules which have been abolished since 1976. *Cole v. Celotex Corp.*, 599 So.2d 1058 (La. 1992). Under the *Cole* decision, there are currently *thousands* of asbestos exposure cases pending against shipyard co-employees in Louisiana.

In addition, the Louisiana Supreme Court stands alone in consistently ignoring LHWCA tort immunity since it adopted the outdated "election of remedies" doctrine in *Poche v. Avondale Shipyards, Inc.*, 339 So.2d 1212 (La. 1976), *appeal dismissed*, 434 U.S. 803 (1977). This action began after the 1990 amendment to the Louisiana Workers' Compensation Law overruling *Poche* and abolishing concurrent jurisdiction in Louisiana. La. Rev. Stat. Ann. 23:1035.2. Yet the Louisiana Supreme Court refused to dismiss this action in spite of LHWCA immunity, apparently because the *Cole* decision allowed the Court to apply pre-1990 law. Thus, co-employees will continue to be sued for tort damages and Louisiana's twenty-year history of ignoring LHWCA immunity will continue unless this Court grants this writ. Under these circumstances, one could hardly argue that the issue is "moot."

3. Respondents' Reliance on State Law Authorities Misses the Point.

Having conceded LHWCA coverage, Respondents rely solely on the concurrent jurisdiction doctrine to justify their suits against the Todd co-employees. As this Court recognized in *Sun Ship v. Pennsylvania*, 447 U.S. 715 (1980), concurrent jurisdiction exists for purposes of maximizing workers' compensation benefits. But this Court has never held that concurrent jurisdiction allowed a tort suit otherwise expressly prohibited by Section 933(i). Indeed, this Court recognized in *Sun Ship* that preemption may occur when, as in this case, a state law stands in direct conflict with some specific provision of the LHWCA. *Id.* at 724 n.6. *See also, Peter v. Hess Oil Virgin Islands Corp.*, 903 F.2d 935 (3d Cir. 1990), *cert. denied*, 498 U.S. 1067 (1991) (holding that Section 933(i) preempted state tort claims).

Respondents cite numerous state authorities, none of which has any bearing on the federal question to be answered. It simply does not matter whether Louisiana's case law applies concurrent jurisdiction to tort cases. The question is whether federal law *allows* the state to apply concurrent jurisdiction in tort cases, as opposed to benefits cases. Petitioners have presented this Court with numerous state and federal authorities which, like the *Peter* court, hold that concurrent jurisdiction in tort cases is in direct conflict with Section 933(i) and must be rejected.

Respondents argue that the plaintiffs' tort-based causes of action are "vested" under state law and therefore may not be preempted under Section 933(i). According to Respondents, state law tort remedies become "vested" on the date a plaintiff first inhales the asbestos fibers. Response to Petition, p. 6. In other words, the Respondents argue that Section 933(i) may not be applied because Louisiana follows the "exposure theory" in occupational disease cases.

Respondents' reliance on the exposure theory adopted by the Louisiana Supreme Court stands in direct contrast to the Supremacy Clause of the United States Constitution. No State may ignore a federal statute simply because it conflicts with a state law rule. If LHWCA tort immunity depended on the interpretation of state law as to when tort remedies become "vested," then Section 933(i) will mean different things in different states. For example, an occupational disease suit in Alabama is preempted by Section 933(i) under *Fillinger v. Foster*, 448 So.2d 321 (Ala.), *cert. denied*, 469 U.S. 872 (1984), while an identical suit in Louisiana will not be preempted. Moreover, the same suit in federal court will be preempted without regard to state law, but preemption in Louisiana *will depend* on state law.

When a state law and a federal law directly conflict, as in this case, the Supremacy Clause requires that the state law be preempted. For this reason, Louisiana's adoption of the exposure theory of liability is irrelevant for purposes of interpreting the scope of LHWCA Section 933(i).

CONCLUSION

For nearly twenty years, Louisiana has annulled federal co-employee immunity mandated by the LHWCA. The federal issue presented in this Petition is squarely framed for determination. The issue to be decided is purely legal – can a state ignore the express exclusivity provision of LHWCA Section 933(i) in a tort suit against a co-employee? Until this Court answers that question, co-employees in Louisiana will continue to be deprived of the "quid pro quo" envisioned by Congress when it enacted Section 933(i).

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